

**FILED**  
**02-13-2019**  
**Clerk of Circuit Court**  
**Outagamie County**  
**2013CF001074**

1      STATE OF WISCONSIN                      CIRCUIT COURT                      OUTAGAMIE COUNTY

---

2      **STATE OF WISCONSIN,**

3                                      Plaintiff,

4      v.

**Case No. 13-CF-1074**

5      **CHONG LENG LEE,**

6                                      Defendant.

---

7                                      **JURY TRIAL - DAY EIGHT**

---

9      BEFORE:                      **HONORABLE GREGORY B. GILL, JR.**  
10                                      Circuit Court Judge, Branch IV  
11                                      Outagamie County Justice Center  
                                    Appleton, WI 54911

12      DATE:                      **March 4, 2016**

14      APPEARANCES:              **CARRIE SCHNEIDER**  
15                                      District Attorney  
                                    Appearing on behalf of the State

16                                      **ANDREW MAIER and ALEXANDER DUROS**  
17                                      Assistant District Attorneys  
                                    Appearing on behalf of the State

18                                      **DEBORAH VISHNY and EVAN WEITZ**  
19                                      Attorneys at Law  
                                    Appearing on behalf of the Defendant

20                                      **CHONG LENG LEE**  
21                                      Defendant  
                                    Appearing in person

22

23

24      Joan Biese  
25      Official Reporter, Branch IV  
            Outagamie County

**I N D E X****WITNESSES****PAGE****JOHN SCHIRA**

Examination by Attorney Vishny.....	5
Examination by Attorney Schneider.....	108
Examination by Attorney Vishny.....	145
Examination by Attorney Schneider.....	153
Examination by Attorney Vishny.....	154
Questions from Jury.....	159
Examination by Attorney Schneider.....	161

**JAMES L. TRAINUM**

Examination by Attorney Vishny.....	170
Examination by Attorney Schneider.....	254
Examination by Attorney Vishny.....	271
Examination by Attorney Schneider.....	275

**TENG LEE**

Examination by Attorney Maier.....	278
Examination by Attorney Weitz.....	298
Examination by Attorney Maier.....	307
Examination by Attorney Weitz.....	309
Examination by Attorney Maier.....	312

<u>1</u>	<u>EXHIBIT</u>	<u>PAGE</u>
2	1 - White Board-Luna Lounge.....	156
3	97- Disk 10 of 16 HEMS #60-62, 71.....	240
4	106- Transcript-Interview of Tou Shoua Lee.....	249
5	114- Transcript-Interview of Phong Lee.....	60
6	122- Paul Lee Statement.....	127
7	160- Transcript-Interview of Joe Thor.....	115
8	161- Transcript-Interview of Joe Thor.....	242
9	162- Transcript-Interview of Joe Thor-Item 142.....	242
10	170- Jail Call Transcript-12/18/13.....	280
11	171- Jail Call Transcript-12/28/13.....	282
12	172- Jail Call Transcript-1/7/14.....	285
13	173- Jail Call Transcript-1/22/14.....	287
14	174- Jail Call Transcript-1/29/14.....	289
15	175- Jail Call Transcript-2/2/14.....	294
16	176- Transcript-Interview of Paul Lee 12/12/13-12:41 a.m.....	66
17	177- Transcript-Interview of Paul Lee 12/12/13-11:58 a.m.....	81
18	178- Reid Training Manual.....	16
19	179- Transcript-Interview of Joe Thor-Item 233.....	33
20	180- Search Warrant.....	103
21	181- Search Warrant.....	103
22	182- Transcript-Interview of Paul Lee 12/12/13-2:19 a.m.....	126
23	189- Transcript-Interview of Paul Lee-12/11/13.....	217
24	190- James L. Trainum Resume.....	170
25	191- James L. Trainum Preliminary Report.....	203
	192- Appendix A.....	204
	193- James L. Trainum Supplemental Report.....	204
	194- Appendix G.....	192

1                                    **TRANSCRIPT OF PROCEEDINGS**

2                                    (The jury was escorted into the courtroom.)

3                                    THE COURT: Please be seated. We will go  
4 on the record.

5                                    We are on the record in *State of Wisconsin v.*  
6 *Chong Lee*.

7                                    Mr. Lee appears at counsel table, along with his  
8 counsel, Attorney Evan Weitz and Deja Vishny. Also  
9 seated at counsel table under the student practice  
10 rule is Solomon Gatton. Representing the State of  
11 Wisconsin, Outagamie County District Attorney Carrie  
12 Schneider. Also present are Assistant District  
13 Attorneys Andrew Maier and Alex Duros.

14                                   We are prepared to continue with the testimony  
15 of the sergeant, correct?

16                                   THE WITNESS: Yes.

17                                   THE COURT: Sergeant, I would remind you  
18 that you are still under oath, sir; and with that, I  
19 believe that we were at the point where  
20 cross-examination was to commence. Is that your  
21 recollection, Attorney Schneider?

22                                   ATTORNEY SCHNEIDER: Yes.

23                                   THE COURT: Attorney Vishny, whenever you  
24 are ready.

25                                   ATTORNEY VISHNY: Thank you.

1 EXAMINATION OF JOHN SCHIRA

2 BY ATTORNEY VISHNY:

3 Q Sergeant Schira.

4 A Yes, ma'am.

5 Q Yesterday you were asked some questions about your  
6 training?

7       A       Yes, ma'am.

8 Q The Appleton Police Department has sent you to many  
9 training programs.

10       A       Yes, ma'am.

11 Q And those are primarily by outside providers as well  
12 as in-service.

13 A It's -- I guess, ma'am, yes.

14 Q But as far as outside providers, when Appleton Police  
15 Department sends you to an outside provider, what you  
16 have to do -- or what they have to do is pay a fee  
17 and then you go to the outside provider?

18            A            No.

19 Q They do it for free?

20 A Many of the trainings that we go to are free.  
21 They're funded through the -- well, through state  
22 funding, there is DOJ grants, things like that.

23 Q So they're grant funded, but somebody -- some  
24 taxpayer somewhere is funding these trainings,  
25 right?

1 A I wouldn't know that, ma'am.

2 Q All right. But it's an investment in you being able  
3 to do a good job as a detective. You can agree with  
4 that.

5 A Yes, ma'am.

6 Q And I assume you would agree that anybody in any  
7 profession, that training them to do their job  
8 properly is very important.

9 A Is that a question, ma'am? I guess I don't  
10 understand.

11 Q Would you agree with me that for any person in any  
12 professional capacity that going to training to learn  
13 how to do your job properly is very important?

14 A Yes.

15 Q Now, one example of some of the training you receive,  
16 and this is probably in-house, is using your firearm.

17 A Correct.

18 Q And how it functions mechanically?

19 A Yes.

20 Q How to break it down?

21 A Yes.

22 Q Keep it in good condition?

23 A Yes.

24 Q Safety features?

25 A Yes.

1 Q How to aim and fire at a target properly should that  
2 unfortunate day ever come for you that you have to  
3 use it in the line of duty?

4 A Yes.

5 Q When to shoot and not to shoot?

6 A Yes.

7 Q That's very important as well, right?

8 A Correct.

9 Q And we can agree that this training is so important  
10 because it could actually come down to a matter of  
11 life and death?

12 A What training are we talking about?

13 Q Firearm training. I'm talking about firearms right  
14 now, right?

15 A Yes.

16 Q And it's fair to say that you follow your training  
17 when it comes to dealing with firearms?

18 A It depends on the type of training that you go to.

19 Q Do you ignore your training when it comes to  
20 firearms?

21 A Depends what training you go to. There is the  
22 training that I've gone to where it's not been good  
23 training.

24 Q How about the training inside the Appleton Police  
25 Department for firearm training?

1 A For the most part it's good.

2 Q But sometimes you think you know how to do it better  
3 it sounds like.

4 A I didn't say that.

5 Q Well you say some of the training is not good, so  
6 when you've gone to not good training, I gather your  
7 opinion is that you are able to do a better job than  
8 what's being taught by the trainer?

9 A Or that I've learned things from other sources that I  
10 think are better.

11 Q But you wouldn't want to disregard training you think  
12 is good because it could involve making a serious  
13 mistake, right?

14 A I guess it depends on the training.

15 Q Now, you've also been trained in evidence collection  
16 and preservation?

17 A Yes, I have.

18 Q In report writing?

19 A Yes, I have.

20 Q In interviewing witnesses?

21 A Yes, I have.

22 Q How to draft search warrants properly?

23 A Yes.

24 Q Or work with the District Attorney to get search  
25 warrants?



1 A Yes.

2 Q Understanding when you need a search warrant in order  
3 to obtain evidence compared to when you don't need a  
4 search warrant, that's very important, right?

5 A Correct.

6 Q Because if you don't have a search warrant and you  
7 needed one, evidence might not be admissible in  
8 court?

9 A Correct.

10 Q So that's clearly not a mistake you would ever want  
11 to make, right?

12 A Correct.

13 Q And how to interrogate suspects. You've learned  
14 that?

15 A I have.

16 Q Now, not only are you trained when you first began  
17 your job, but you learn updates as you go on with  
18 your job, you get updated training.

19 A We do.

20 Q And learn the latest methods that are available to  
21 you as law enforcement officers to investigate and  
22 solve crimes.

23 A We do.

24 Q And that's important because things change over time  
25 in the law enforcement field, right?

1 A Are we talking about firearms, ma'am?

2 Q We're talking about everything now.

3 A Okay.

4 Q I mean, things -- for example, the way identification  
5 procedures are done if one uses a photo array, that's  
6 changed over time, hasn't it?

7 A I'm sorry. Did you say photo?

8 Q Yes. Identification procedures with photo arrays,  
9 that's changed over time, how you do that.

10 A I guess I'm not sure.

11 Q Well, did you used to do them where all the pictures  
12 of the suspect and the fillers were all in one page  
13 and shown to a witness and they would pick it out if  
14 they could make an identification?

15 A I don't think I've ever done it that way, no.

16 Q Okay. But you know that several years ago there  
17 became training from the Wisconsin Department of  
18 Justice that identification procedures were supposed  
19 to be done by showing pictures one at a time to an  
20 eyewitness.

21 A I believe so, yes.

22 Q And that it was important that those pictures be  
23 shown in a way so that the law enforcement officer  
24 showing the pictures would not know who the suspect  
25 was in which order so that they wouldn't contaminate

1 the identification process.

2 A I really don't know, ma'am. I don't do a lot of  
3 photo lineups. But I believe what you're saying is  
4 true.

5 Q Right. But certainly you wouldn't go do a photo  
6 lineup and not follow the proper guidelines set forth  
7 by the Department of Justice, would you?

8 A I believe I would not.

9 Q Okay. So if the guideline -- when guidelines came  
10 in, you know, whatever year they came in, everyone in  
11 your department, yourself included, would switch to  
12 doing it the right way?

13 A I believe so, yes.

14 Q And you know that in a photo identification  
15 proceeding it's very important to not contaminate the  
16 memory of the eyewitness.

17 A I guess you would have to explain contaminate.

18 Q In other words, to give the eyewitness information so  
19 that instead of them making an identification from  
20 their own memory, they might be making it because of  
21 suggestions you might make as a law enforcement  
22 officer. You wouldn't do that.

23 A Again, I think that's not exactly how it would  
24 happen. If I'm -- may I explain?

25 Q Of course.

1     A     If I'm doing the investigation and I've been  
2           interviewing maybe a witness or a victim of a crime,  
3           I'm going to be asking them specific questions about  
4           what the person looks like, the clothing that they  
5           may be wearing, if they have scars or tattoos,  
6           anything that's like a distinguishing mark maybe, so  
7           if pictures are shown, in a sense, I've refreshed  
8           their memory of what the person looks like. I've  
9           asked them specific questions on what the person  
10          looks like, clothing, size, distinguishing marks, so  
11          I guess that would be doing that, wouldn't it?

12    Q     I don't think you understood my question.

13    A     Okay.

14    Q     But obviously you would get the information, but then  
15          you pick -- if you have a suspect in mind, you get a  
16          picture of the suspect and some fillers, people who  
17          you don't believe -- or don't believe were involved  
18          in the crime but they look roughly alike to show to  
19          the witness, right?

20    A     I believe one of the things that DOJ standardized, or  
21          maybe it's just how Appleton does it, again I'm not  
22          an expert in this field because I rarely use photo  
23          lineups, but I believe we don't even get the  
24          pictures. I believe the pictures come through an  
25          outside source. I think we many times will use

1 Outagamie here to get pictures.

2 Q Right. But when you get the pictures, the point I'm  
3 trying to make is you would never show the pictures  
4 to the witness and say, hey, pick this guy out,  
5 right?

6 A Another thing that we don't do is when you're talking  
7 about changes, again, I'm not an expert in this  
8 field, but the investigating officer, if you're  
9 saying if it was me, we don't even provide the  
10 pictures to the witness or the -- whoever it is.  
11 There would be another officer that would do that.

12 Q Okay. Maybe you misunderstood my question.

13 ATTORNEY SCHNEIDER: I'm -- at this point I  
14 think I'm going to object as to relevance, and I can  
15 approach if you want us to.

16 THE COURT: Come on up.

17 (Bench conference.)

18 Q (BY ATTORNEY VISHNY) If I understood you right,  
19 maybe I misunderstood you, what you're saying is you  
20 don't even have the officer who got the information  
21 from the witness show pictures -- photo array to a  
22 witness, you get somebody else to do it so they don't  
23 even know who the suspect is, right?

24 A Yes.

25 Q And the reason that you do that is because you want

1 to make sure you don't contaminate the suspect's  
2 memory -- I mean the witness's memory by the officer  
3 even inadvertently, right?

4 A Yes, ma'am.

5 Q Because certainly you would never deliberately  
6 contaminate somebody's memory, but the guidelines  
7 require this because mistakes can happen and  
8 contamination can occur by accident without even  
9 realizing it's going on in showing a photo array?

10 A I believe that's why the state did that, yes.

11 Q Now -- so I guess we can all agree you don't want to  
12 use 1990s methods in a, you know, 2013 to 2016 world.

13 A Actually --

14 ATTORNEY SCHNEIDER: I'm going to object  
15 and ask for clarification. What methods,  
16 interviewing, photo lineups, she's talked about gun  
17 use?

18 Q (BY ATTORNEY VISHNY) You wouldn't want to use those  
19 kind of methods with guns, right?

20 A No, I would disagree.

21 Q You would want to use 1990s methods -- if there are  
22 new safety features on a gun, would you want to use  
23 1990?

24 A When it comes to common sense things that work that  
25 stand the test of time --

1 Q Right.

2 A -- absolutely. Some of the best training techniques  
3 I ever learned, regardless if it's gun or interview  
4 techniques, aren't necessarily brand new  
5 techniques.

6 Q Okay. But we have new techniques with witness  
7 identification and contamination, and those are  
8 better techniques, right?

9 A Specific towards?

10 Q Eyewitness identification.

11 A I -- I believe some of them are better, yes.

12 Q And they're based on research by sociologists,  
13 scientists, to prevent mistakes, right?

14 A I don't know that.

15 Q Okay. Now let's talk about interrogation. You have  
16 been trained in interrogation techniques?

17 A Yes, ma'am.

18 Q And you went to what's called the Reid School of  
19 Interrogation?

20 A I did.

21 Q You did that at Fox Valley Technical College,  
22 right?

23 A I -- I'm not sure where I went, but I did go, yes.

24 Q You remember that it was three days long?

25 A It was the -- the basic class, yes.

1 Q And the Reid School is a -- an outfit that teaches  
2 interviewing and interrogation of suspects, in  
3 particular, and witnesses, they teach all over the  
4 country. Are you aware of that?

5 A I'm not very familiar with Reid, no.

6 Q All right. So you went to their training and you  
7 were given a workbook by them, right?

8 A I don't recall.

9 Q I'm going to show you --

10 ATTORNEY VISHNY: Get this marked.

11 ATTORNEY SCHNEIDER: Judge, can we approach  
12 before she shows it to the witness?

13 THE COURT: You may.

14 (Bench conference.)

15 ATTORNEY VISHNY: All right.

16 Q (BY ATTORNEY VISHNY) I'm showing you what's been  
17 marked as 178. Now this is obviously a photocopy.  
18 Does that look similar to the book?

19 A Ma'am, I don't know. How many years ago was the  
20 training?

21 Q Well, I didn't go, but I thought you said eleven  
22 yesterday.

23 A Okay. I don't remember. That was eleven years  
24 ago.

25 Q All right. Whether you recall what the -- you don't



1 remember like a green kind of soft cover book?

2 A No.

3 Q You do remember, or maybe you don't, I guess you'll  
4 have to tell me, some of the things that you were  
5 taught in terms of how to interrogate suspects?

6 A Ma'am, I truly remember very little about that  
7 school. That was eleven years ago, and I -- I mean I  
8 understand some of the basic concepts of Reid, but  
9 again, I don't follow a specific technique or outline  
10 or template for when I do investigations.

11 Q When you interrogate somebody you suspect of a crime,  
12 one of the things you do is you express a strong  
13 belief that the person has some involvement in the  
14 crime that you're investigating.

15 A I guess what I first would say is I try to interview  
16 people. I try to talk to them. That's where I begin  
17 with.

18 Q The method that you've been trained in is actually  
19 you should interview people first with some  
20 open-ended questions and then proceed to an  
21 interrogation after first interviewing and getting  
22 what they have to say, right?

23 A Are you saying that I learned this at Reid to do  
24 this?

25 Q Well, I'll ask you about Reid and I'll ask you

1           generally have you learned to do that. So, you know,  
2           I don't want to do compound questions here, so let me  
3           first ask Reid.

4     A     Okay. Are you asking me if that's what I learned at  
5           Reid, ma'am?

6     Q     Yeah.

7     A     I -- again, I don't remember specifics about it. I  
8           believe that at that time I'd already been an  
9           investigator for four or five years possibly, maybe  
10          even more, and I had kind of already developed my own  
11          interview techniques. And as far as the Reid  
12          technique, I don't recall that Reid is a specific  
13          technique, I believe it's like a -- like some  
14          theories and questions, and I think they just  
15          basically took -- honestly I think they took  
16          basically common sense interview stuff and put their  
17          name on it.

18    Q     All right. That's your belief. I understand that.  
19          Do -- have you been trained in general then for this  
20          question to express when interrogating a suspect a  
21          strong belief that they're involved in the crime?

22    A     When I interview people it depends on the initial  
23          contact, what they say, how they say, their  
24          interaction with the police, their level of  
25          cooperation of -- I guess I look at a variety of

1 things.

2 Q You know what theme development is, right?

3 A I -- I might know what it means, but I don't want to  
4 -- maybe you can explain it to me.

5 Q Have you done what you believe to be theme  
6 development when you've interrogated people?

7 A I'm not positive I know what theme development is. I  
8 think it's -- I think I do, ma'am, but I think I kind  
9 of renamed it something else.

10 Q What's your name for it?

11 A If it's what I think you are talking about, well,  
12 again, maybe you can explain to me what it is. I'm  
13 not going to play games with you. I truly will tell  
14 you what I think it is.

15 Q Okay. Unfortunately we're in a situation where I ask  
16 the questions.

17 A Okay.

18 Q So if you don't want to answer them, I can understand  
19 feeling uncomfortable, but I want to ask you what is  
20 -- what's the name you use for theme development?

21 A Okay. I don't want to get into semantics with you,  
22 but I don't know what you mean by theme. What I try  
23 to do is I try to -- you know, if somebody -- let's  
24 say I -- let's say I was working patrol and I come up  
25 to a corner and there's tire tracks, you know, going

1 off the ditch and going into somebody's front yard  
2 running over their mailbox, and it's kind of slippery  
3 out, I'd get out and I'd say were you driving a  
4 little bit too fast for conditions, and that might be  
5 a theme. So when the person tells me, yeah, I was  
6 driving too fast for conditions, that's what  
7 happened.

8 Q So in other words, you would take a look at the  
9 evidence, suggest what happened and see if the person  
10 you're questioning would agree with you.

11 A That's what I believe theme is, yes.

12 Q Okay. Now, one theme -- have you ever heard of a  
13 theme being offered to a suspect as a moral excuse?

14 A As a moral excuse?

15 Q A moral excuse.

16 A No, ma'am.

17 Q And could an example of a theme be if you're talking  
18 to somebody and saying I believe you're the shooter  
19 but, you know, look, this guy was a lot bigger and  
20 you were potentially in danger, would that be an  
21 example of a theme?

22 A I would think that's similar to basically just coming  
23 up with a reasonable, you know, explanation of why  
24 somebody would act in a certain manner.

25 Q Because when you offer that explanation, you know,

1           what you're offering to the person is that it  
2           minimizes their behavior, right?

3     A     I don't think it minimizes it, I think it just  
4           explains why they did it.

5     Q     So it's one thing to go up and just shoot somebody in  
6           the head for no reason, but it's something different  
7           if you say to the person, well, you did it because  
8           this guy was bigger than you. That -- wouldn't you  
9           agree that that offer minimizes behavior?

10    A     Again, I don't think it minimizes, I think it just  
11           gives a reasonable explanation of why somebody would  
12           do something like that. I -- I can't wrap my head  
13           around why somebody would do something like that.  
14           And that's maybe what I'm trying to think is like  
15           maybe this is why he did it.

16    Q     I see. So you don't remember being trained that  
17           that's a specific template or paradigm to interrogate  
18           people? Apparently you don't recall that?

19    A     I think that's an innate investigation skill. I  
20           think everybody is -- any good investigator would try  
21           to figure out why somebody does something. I just  
22           think that's common sense.

23    Q     Now, one of the things, you know, you're saying it's  
24           common sense to make these suggestions, so, you know,  
25           we'll use your word, explanation, common sense, what

1           you call, you know -- you understand other people may  
2           call that -- people who study interrogation may call  
3           that minimization. You understand that, right?

4     A     Minimalization?

5     Q     Minimization.

6     A     No, I did not know that.

7     Q     So one thing you do know is that you cannot coerce  
8           people into making statements. That's pretty clear,  
9           right?

10    A     Coerce as in force them to making a statement?

11    Q     Right.

12    A     Correct.

13    Q     So, you know, certainly beating people up, holding  
14           guns to their head, depriving them of food, water,  
15           that's out?

16    A     Yes, ma'am.

17    Q     All right. There's also psychological coercion,  
18           right?

19    A     I'm not a psychiatrist, I don't know.

20    Q     Well, for example, if you threaten to take somebody's  
21           children away when you're interrogating them unless  
22           they give you a confession, that would be an example  
23           of psychological coercion, right?

24    A     I guess it would be, yes.

25    Q     And certainly threats and promises are not permitted

1 in an interrogation.

2 A Threats or promises.

3 Q Yeah.

4 A I don't know that, no.

5 Q You can't threaten somebody, can you? You think it's  
6 okay?

7 A I think you can tell people that there's consequences  
8 that if they lie to you or if they're involved in a  
9 crime that they'll be held accountable for that. I  
10 think you can do that.

11 Q Including telling them how much time they might be  
12 looking at? Do you feel that's okay?

13 A I do. I think if somebody has committed a crime or  
14 you think that they've committed a crime and you tell  
15 them, you know, you punched somebody in the nose down  
16 on College Avenue, the bond amount for that is \$275.  
17 I can do that.

18 Q So you feel it's fine that -- now obviously you have  
19 a soft tone when you question suspects, right?

20 A I try to.

21 Q And that's part of the training too, to have a soft  
22 tone.

23 A No, not necessarily. I have -- I've never been  
24 taught to have a soft tone.

25 Q It's just you naturally.

1     A     I think a lot of it, again, depends on, like we  
2           talked about earlier, the people that you're dealing  
3           with, their level of cooperation.  If they're  
4           outright lying to you, I think I'm a human being, I  
5           can -- I can, you know, be affected by an interview  
6           just like the person being interviewed can be.

7     Q     So you can be affected with a soft tone and harsh  
8           words?

9     A     I guess I wouldn't consider telling somebody that  
10           they're going to be held responsible for what they  
11           did, if they in fact did it, being harsh.  I think  
12           it's just being honest.

13    Q     All right.

14                   ATTORNEY VISHNY:  All right.  Page 48.

15    Q     (BY ATTORNEY VISHNY)  I'm going to show you something  
16           from the Reid book and just ask you if you've ever  
17           been trained in this, whether you recall it from Reid  
18           or something else.

19    A     Yes, ma'am.

20    Q     Okay.  On Page 48, and it's highlighted here to help  
21           you, there's a discussion of what they call, III,  
22           Principles of Theme Development.

23    A     Okay.

24    Q     All right.  And the highlighted part -- why don't you  
25           read the highlighted out loud.



1 A Okay. I really should have brought my glasses.

2 Q I can do it if you --

3 A Can I hold it away from me?

4 Q You can even borrow my reading glasses because I need  
5 them too.

6 A I'll wear your reading glasses. What do they look  
7 like?

8 Q Well, they're red and they're very feminine.

9 A Somebody will take a picture of me wearing those  
10 glasses. No way.

11 Under A: Basic rules underlying interrogation.  
12 It is psychologically wrong for the interrogator to  
13 remind the suspect of the punishment for his crime.  
14 We cannot expect a person to tell the truth without  
15 giving him the opportunity to couple his admission  
16 with an excuse that allows him to save  
17 self-respect.

18 Q Okay. So have you ever been trained that? Do you  
19 know?

20 A I don't know.

21 Q I mean, whether -- from wherever.

22 A If this was in the basic Reid class that I went to,  
23 then I probably was.

24 Q Okay. But, you know, as you said, you took Reid a  
25 long time ago, and I'm saying a similar book, I can't

1 tell you that this is the identical book that you  
2 took because they have different editions, but in  
3 that principle -- and I will -- since it's coming  
4 evidence later, I will advise this is a 2008 edition  
5 of the book. Okay? So I can't say the book was  
6 identical.

7 A Okay.

8 Q All right. So that's --

9 A Is what you're saying, though, then this is probably  
10 not what I was trained in.

11 Q No. I'm not saying it is or isn't. I'm asking you,  
12 you know, whether it was a Reid or any of your later  
13 training because you referred to a lot that later  
14 training is very important.

15 A None of that was Reid.

16 Q Okay. So that principle that's in this book --

17 A Um-hum.

18 Q -- have you been trained in that principle? That's  
19 what I'm trying to ask you.

20 A I'm going to have to say I don't recall.

21 Q All right. Now, on Page 73, and I'll just read this  
22 because it's dark and it's going to be hard to read.  
23 Okay?

24 A I got it.

25 Q Okay. That's fine. The highlighted part, this is in

1 a different section, and can you read D, what's  
2 highlighted?

3 A Yes. D is: The alternative question should not  
4 threaten consequences or offer promises of leniency.  
5 Do you want me to do those too?

6 Q Yes. And then they say there are examples of  
7 improper alternative questions, right?

8 A Yes. It says: Do not -- do you want to cooperate  
9 with me and tell me what happened or spend the next  
10 five to seven years behind bars.

11 Q Okay. Stop. That's one example of an improper  
12 question, correct?

13 A According to this.

14 Q According to this, yes.

15 And No. 2, is there a -- what's the second  
16 example they give of improper question?

17 A It says: Do you want to be charged with first-degree  
18 murder which will mean life in prison or was this  
19 just manslaughter.

20 Q Okay. Thank you.

21 Have you ever been trained that those are  
22 improper questions?

23 A Again, I don't recall, and plus this isn't the  
24 book -- even if I had been at that training, that's  
25 not the book I would have been trained out of, right?

1 Q Yeah. I can't say it's the book. I'm asking about  
2 your general training. Have you ever been trained no  
3 matter who the provider is that -- whether the  
4 provider is the Appleton Police Department, a  
5 homicide investigation seminar you went to, have you  
6 ever been trained that that's improper?

7 A No.

8 Q Have you ever been trained that the reason it's  
9 considered improper is because it can get false  
10 statements?

11 A I don't recall that, no.

12 Q Okay. Now, turning to Page 84, Statement Written By  
13 Suspect.

14 ATTORNEY VISHNY: Do you have Page 84? I  
15 just want to make sure they have it, because if they  
16 don't -- can you please give them Page 84?

17 ATTORNEY SCHNEIDER: No. I do have 84.

18 ATTORNEY VISHNY: Okay. Good. I just want  
19 to make sure.

20 Q (BY ATTORNEY VISHNY) There is also some guidelines  
21 in this book on a statement written by the suspect,  
22 correct?

23 A This top one here?

24 Q No. I'm going to -- but the general topic here, IV,  
25 Statement Written By Suspect.

1 A Yes, ma'am.

2 Q Right?

3 A Yes.

4 Q And the guideline says that you should tell them that  
5 -- and this part is not highlighted, explain to the  
6 person you want them to write a letter to a victim,  
7 that's one thing, but that's not really relevant  
8 here, but when writing a statement that you should  
9 remain in the room, correct?

10 A Correct.

11 Q And you do not dictate what the suspect should  
12 write?

13 A Correct.

14 Q And do not spell words for example?

15 A Right.

16 Q So that you're not supposed to coach a statement. Do  
17 you agree with that from your training wherever you  
18 have gone to training?

19 A Can I explain?

20 Q You know, you gave an explanation yesterday of what  
21 you want to do, and I'm sure Miss Schneider will ask  
22 you on redirect, but have you been trained to not  
23 coach people in what to say?

24 A No. I just wanted to point out again that you're  
25 showing me a book that I didn't get trained on and

1           you're asking me if I've been trained on that book.

2       Q     No.  Actually, I think maybe you're not understanding  
3           my question.  I'm asking if you've ever been trained  
4           on this to not coach people what to write in any  
5           training program you've ever gone to.

6       A     Well, yeah, you don't want to tell the person to make  
7           a false statement, of course.

8       Q     Okay.  Now, you don't want to tell a person to make a  
9           false statement.  Like you would never say, hey, I'd  
10          like to you write a fake statement, right?  You would  
11          never say that, I want you to write a lie for me, to  
12          a person you're interviewing.

13      A     Correct.

14      Q     But do you at all believe -- never mind.  Strike  
15          that.

16               All right.  So you wouldn't say it.

17               I'm going to ask you now some questions about  
18          this particular investigation.

19      A     Yes, ma'am.

20      Q     You became involved in this investigation and you  
21          took a statement from Joe Thor on December 9th, very  
22          briefly, you talked to him.  You didn't take a  
23          written statement, maybe you talked to him and asked  
24          him some questions, right?

25      A     Was that my first interview with him?

1 Q Yes. And that was at the Lisa Stutzman residence.

2 A Yes, ma'am, I did.

3 Q When you were there and talking to Joe Thor, it was  
4 kind of a chaotic situation, I believe you described  
5 it that way?

6 A A little bit, yes.

7 Q To the point that you felt that you and -- I can't  
8 remember if you were with Meyer or Tauber right now.  
9 I'm forgetting.

10 A Yeah. It was with Cary.

11 Q Cary Meyer. You were with Sergeant Meyer. And to  
12 the point where even maybe potentially your safety  
13 could have been compromised? Maybe I misunderstood  
14 you, but there was a reason you felt you had to leave  
15 at that time.

16 A There was a lot of people that had shown up at the  
17 residence, and I really want an opportunity to -- to  
18 have a calm setting, not to have outside influences  
19 and things like that.

20 Q Now, when you first made contact with Joe Thor, there  
21 was another individual there named Ricky Chang,  
22 right?

23 A That's -- that's what Joe told me his name was,  
24 right.

25 Q You didn't know that personally of your own

1 knowledge?

2 A No.

3 Q But whoever this person was, he was trying to tell  
4 Joe Thor to not answer questions.

5 A I don't think he was saying don't answer questions,  
6 he was saying like, we have to go, we got to go, and  
7 Joe was saying that he was his ride.

8 Q I see.

9 A I think I even said that I would -- I think I even  
10 said to Joe that we would give him a ride home if he  
11 needed a ride.

12 Q Which he declined?

13 A Yeah. Because I think either Ricky or someone else  
14 came back and got him.

15 Q When you talked to Joe Thor there, he initially  
16 denied being present in Luna at the time of the  
17 shooting, right?

18 A Yes, ma'am.

19 Q And then you told him you had some photographic or  
20 documentary or video -- documentary evidence or video  
21 that would show that he was in fact there at the time  
22 of the shooting, right?

23 A Yes, ma'am.

24 Q And at that time he then admitted to you to being  
25 there, right?



1 A It took a little while, but he did, yes.

2 Q Do you recall telling Joe Thor that time that the  
3 victim was shot point blank?

4 A I don't -- is it in the transcript? I guess I'd have  
5 to see it. I don't recall that.

6 Q We may have to come back to it because I don't have  
7 it here but I'll show you the transcript eventually.

8 I'm going to move on. If it's not in there, I'll  
9 let you know.

10 Do you recall at that -- telling Joe Thor that?

11 ATTORNEY VISHNY: I'm just going to get it  
12 marked. Sorry, I didn't have this marked. I meant  
13 to.

14 THE COURT: If you need more water, just  
15 let us know.

16 THE WITNESS: Yeah. I will probably.

17 THE COURT: All right.

18 ATTORNEY VISHNY: All right. I have found  
19 the right places.

20 Q (BY ATTORNEY VISHNY) I'm going to show you what's  
21 been marked as Exhibit 179?

22 A Okay.

23 Q Okay. This is a transcript of your interview with  
24 Joe Thor at Lisa Stutzman's, correct?

25 A Let me look. Is there a specific place? Can I look

1 at the front?

2 Q You can look at whatever you want. I will let you  
3 know that the parties have agreed that this is the  
4 transcript.

5 A Okay.

6 ATTORNEY SCHNEIDER: And, I mean, we should  
7 say all the transcripts we've agreed that may not be  
8 a hundred percent accurate because of the inaudibles  
9 but the best we can possibly maybe do.

10 THE COURT: Very good.

11 A Okay.

12 Q Okay. But you're the person talking to Joe Thor, it  
13 says detective here, but you were the person who  
14 talked to Joe Thor, right?

15 A Is this outside?

16 Q I can't tell you if it's outside or inside.

17 A I can tell if I look at it.

18 Q Okay. Just take a look.

19 A Because Cary was also speaking with him for a short  
20 period of time. Yup.

21 Q That's you. Okay. Great.

22 So, can you -- you told the -- Joe Thor when he  
23 was denying that, you know, you had pictures of him  
24 inside the building, watched him run out of the  
25 building. I'm just paraphrasing to get this done

1 quickly. Okay?

2 A Okay.

3 Q And you say: I'm not going to yell. I'm not that  
4 kind of cop. I'm not a cop that's going to trick.  
5 He's cut you off, he starts talking, right?

6 A Okay.

7 Q All right. So you said to him: You're standing  
8 right there when it happened. You're right -- you're  
9 right -- you're right in the mix, you're right there,  
10 point blank on that guy.

11 No. He was like this. So holy shit, holy shit.  
12 That was Joe Thor's answer.

13 But so you say: Yes, you're right there point  
14 blank on that guy. Correct?

15 A Yes.

16 Q And then going to Page 10, when you are talking to  
17 him, and just to set this in the context, you're  
18 discussing with him the fact that he and his buddies,  
19 Phong and Paul, are running away, right?

20 A This must be -- this must be inside now, right?

21 Q I don't know. If you don't remember it --

22 A Yes, this is -- yeah. This was inside.

23 Q But is that still you?

24 A Yes.

25 Q Okay. And so what you tell him, and I realize

1           there's some inaudibles here so it's not a perfect  
2           transcript, you -- you say to him that you're talking  
3           about when they're running away, correct?

4     A     Yes.

5     Q     All right. And you mention him and Paul and Phong  
6           and then you say: You know what the reason is.  
7           Correct?

8     A     Yes.

9     Q     You're talking to him about why he's running away,  
10          right?

11    A     Right, um-hum.

12    Q     And then what you say to him is, because you're  
13          involved in a crime.

14    A     Correct.

15    Q     He says: No. And then you say to him: And every  
16          jury in the world is going to think that.

17    A     Yes.

18    Q     And you repeat that: Every jury in the world is  
19          going, and then it becomes inaudible.

20    A     Yeah. I believe I kind of -- is that how much time  
21          is like not in a transcript or what does that mean?

22    Q     No. That's at --

23    A     Oh, so at that section that's where it goes.

24    Q     This doesn't have anything to do with real time, this  
25          has to do if I wanted to listen to the tape I know to

1 go to 42 minutes and one second on the overall tape.

2 A Gotcha.

3 Q And the overall tape is longer than this transcript.

4 This is an excerpt. So that's what you said. Every  
5 jury in the world is going.

6 A I believe what I was -- again, that's a very short  
7 snippet of a -- I believe like an 18-minute  
8 conversation. What I believe I was saying is that he  
9 had finally admitted to, you know, being there, that  
10 took a while for him to get there, and then he had  
11 talked about, you know, being in a confrontation and  
12 running and hiding clothes and stuff like that. And  
13 I said, well, it makes you look guilty. That's what  
14 it looks like.

15 Q Okay. All right. The next time you talk to Joe Thor  
16 was the following day?

17 A Yes, ma'am.

18 Q He was here at the court?

19 A Yes, ma'am.

20 Q And what had the -- if I understand right, what had  
21 been left was he told you he'd be in court, he would  
22 talk to you, and he was supposed to contact you.

23 A Yes, ma'am.

24 Q But in fact he did not call you, right?

25 A No, he actually said when -- when I made contact with

1           him, he actually had my card in his hand, he says,  
2           oh, I was just coming over to see you.

3       Q     Right.  So he's here at the court and the Appleton  
4           Police Department is across the street?

5       A     Yes, ma'am.

6       Q     Basically, right?

7       A     Um-hum.

8       Q     You wouldn't drive from the parking lot here to the  
9           Appleton Police Department?

10      A     God, no, there's no parking.

11      Q     Not only is there no parking, you're basically  
12           walking across the street and down the block,  
13           right?

14      A     Correct.

15      Q     And when he was approached, he was in his car at the  
16           court at that point.

17      A     I think he was -- he was getting his car.

18      Q     He was getting in his car and then he says, oh, gee,  
19           I've got your card, I was going to call you, right?

20      A     Yes.

21      Q     That's what he said.  But it didn't seem like he was  
22           calling you from the courthouse to really come over  
23           to the police department.

24      A     Well, I don't -- I don't know, ma'am.  I don't know  
25           if he was going to go get lunch first, or I -- I

1 don't know what he was thinking. He was -- he was  
2 real decent. Joe seems like a decent guy.

3 Q Okay. I'm going to ask that you just answer the  
4 questions --

5 A Yes, ma'am.

6 Q -- and not offer your opinion about it one way or  
7 another. Okay?

8 A Yup.

9 Q Okay. So now at that point he comes into the police  
10 department and you conduct an interrogation with him,  
11 right?

12 A Well, like I said, how would you like to start with  
13 an interview.

14 Q Well you may like to start with an interview --

15 A I do.

16 Q -- but you ended with an interrogation.

17 A I know. That was the longest one I think that I had  
18 of any of them.

19 Q Well, this actually is 206 pages.

20 A Yeah.

21 Q So it would be fair to say this went on for about  
22 three hours, right?

23 A I believe so, yes.

24 Q Okay. So you were with Sergeant Rabas?

25 A Actually I think I was with him.

1 Q I'm sorry?

2 A Yes, ma'am.

3 Q Now, during that interrogation, this person -- let's  
4 talk about what happened in this interrogation.

5 A Are you bringing it all up here?

6 Q I'm bringing it all.

7 A All right.

8 Q The whole enchilada, as they say. All right?

9 A Yup.

10 Q But we're not going to read it word-for-word, we're  
11 going to try to focus on some points.

12 A Okay.

13 Q All right? All right.

14 You told Joe that Paul had a gun. You told him  
15 that during this interrogation, right?

16 A I did.

17 Q Okay. And in fact you said it many times, correct?

18 A I don't know how many times.

19 Q All right. Well, let's go through a few of them.

20 Page 26, Line 19. You said: This is, you know,  
21 when we look at our pictures that we have it, dude,  
22 we got a guy with a gun in his hand. All right?  
23 It's done. What we got to do now is we got to make a  
24 decision if you're going to be party to the crime.  
25 Okay? If you're trying to help, trying to hinder the



1 investigation, trying to hide the truth from us.

2 That's what you said, right, not -- didn't  
3 mention specifically right then it was Paul, but  
4 earlier you had mentioned that he's, you know,  
5 running with the guy with the gun in his hand, right?

6 A I believe I did.

7 Q And you knew that in the video it shows Joe going out  
8 the door first with Paul like right behind him.

9 A Yeah. I think Joe was the first guy and then I think  
10 it was Paul and then maybe Phong.

11 Q Yes. Now, going to Page 29, Line 8, you say to  
12 him --

13 ATTORNEY SCHNEIDER: Can you give me a  
14 second to get there please? Thank you.

15 ATTORNEY VISHNY: Of course.

16 ATTORNEY SCHNEIDER: Okay.

17 Q (BY ATTORNEY VISHNY) You're talking with him about  
18 Paul, and Joe says: Paul did not do it. And you  
19 say: Yeah, he did. Right?

20 A Yes.

21 Q He says: I'm serious. Paul -- and then you say to  
22 him: He's got a gun in his hand.

23 A At that time that's what I thought.

24 Q And you say: Yeah, he does, we got it on film, he's  
25 got a gun in his hand, we know he did it.

1 A Correct.

2 Q And even on that same page you basically repeat that  
3 and say: Then why does he have a gun in his hand.  
4 Right?

5 A Yes.

6 Q And you say: It's not that -- like I said, it's not  
7 a complicated case. If you're at a shooting where a  
8 guy just got shot in the head and about two seconds  
9 later he's seen with a gun in his hand, he shot him,  
10 that's the guy, stop protecting him.

11 A Correct.

12 Q Page 31, Line 36. You ask him: Why would Paul have  
13 a gun.

14 ATTORNEY SCHNEIDER: One second please.

15 Okay.

16 Q (BY ATTORNEY VISHNY) Right?

17 A Here?

18 Q Page 31, Line 36.

19 A Why would Paul have a gun?

20 Q Right.

21 A Yes.

22 Q Page 34, Line 6.

23 I'm sorry, but I can't have a side conversation  
24 with you. We're not -- it's 300 pages long. I'm  
25 only going to give examples to Page 56.

1 All right. Page 34, Line 6.

2 A Maybe he handed the gun off and you shot him.

3 Q So you suggest that it's Joe who did the shooting,  
4 right? That's what you're doing, correct?

5 A Yes.

6 Q All right. Page 35, same -- you make the same  
7 suggestion, right: Maybe he did it, maybe he handed  
8 the gun off. Correct?

9 A Correct.

10 Q I'm sorry. That was Line 5.

11 ATTORNEY SCHNEIDER: Yup, I got it.

12 ATTORNEY VISHNY: Miss Schneider, I  
13 apologize.

14 Q (BY ATTORNEY VISHNY) The next one is line -- Page  
15 42, if I can read my handwriting. Page 42, Line 7 --  
16 well that's actually Sergeant Rabas but you're there.

17 Sergeant Rabas says: Do you believe, that's  
18 Line 16, that we got a video of him carrying the  
19 gun.

20 A Yes, that's what it says.

21 Q And then Sergeant -- and Joe says: Who. And  
22 Sergeant Rabas says: Paul. Who did we say had the  
23 gun.

24 A Yes, that's what it says.

25 Q Page 46, Line 9 to 10. Sergeant Rabas says: All

1 right. Now I'm going to point something out in this  
2 picture because you don't think Paul had a gun,  
3 right?

4 A Correct.

5 Q And then Joe says: No, I don't think so. And  
6 Sergeant Rabas says: What if I show you this picture  
7 again and point out where he's got the gun. Now  
8 here's your opportunity. Okay? And have I lied  
9 about any of these pictures I showed you. And Joe  
10 says: No. Right?

11 A Correct.

12 Q And Sergeant Rabas says: Any tricks, nothing like  
13 that. And you say: Have we lied about where their  
14 clothing is, and basically some more talk about that,  
15 and Joe says: No. Correct?

16 A Correct.

17 Q And at Line 29 Sergeant Rabas says: Why would we lie  
18 to you about who had the gun.

19 A Yes.

20 Q Page 50, Line 33, Sergeant Rabas says: Okay. We  
21 have a picture of a gun in Paul's hands. Now when we  
22 eventually talk to him he's going to say he got the  
23 gun from you and you're the one who shot him or that  
24 Phong is the one who shot him or that he's the one  
25 who shot him.

1     A     That's kind of confusing. Let me read that. Okay.  
2           We have a picture of a gun in Paul's hand, now when  
3           we --

4     Q     Now when we eventually talk to him is he going to say  
5           that he got the gun from you and you're the one who  
6           shot him or that Phong is the one that shot him or  
7           that he's the one that shot him. He was asked that  
8           question, right?

9     A     Yeah. I don't understand what that means.

10    Q     Okay. Can you say that out loud so the jurors can  
11          hear your answer?

12    A     It's confusing. I didn't understand that.

13    Q     Okay. Page 56, Line 33. You say: He had in his  
14          hand and on video, it's very clear, it's a gun.  
15          Right?

16    A     I do.

17    Q     And in order to avoid the tedium of going through 300  
18          pages about guns, would it be fair to say that there  
19          were other references to your recollection regarding  
20          guns?

21    A     About the gun?

22    Q     In this interrogation.

23    A     Yes, ma'am.

24    Q     All right. Now, you also then said -- either you or  
25          Sergeant Rabas said numerous times that you

1           believed -- what you said was that you were thinking  
2           that Joe could be the perpetrator and that he shot  
3           him. Do you remember saying that?

4     A     I don't.

5     Q     Okay. Going to Page 36, Line 46, you say -- I'm  
6           going to start actually at Line 39. You got to sell  
7           that shit to the jury. I'm telling you right now,  
8           the jury is going to say you're arguing with the guy  
9           who gets shot. You then admit you see him get shot.  
10          You can tell by how his head gets hit. You run. You  
11          hide your -- you hide things. You lie to the police  
12          afterwards. Who do you think they're going to  
13          charge. Who do you think they're going to believe.  
14          Seriously, man. Who do you think they're going to  
15          believe. Right?

16    A     Yes.

17    Q     He said that?

18    A     Yes.

19    Q     And on Page 37 you say: You think Paul is going to  
20          protect you. This is -- I'm sorry. This is Line 7,  
21          next page.

22                You think Paul is going to protect you. Not  
23          when it comes to going to jail for the rest of your  
24          life. I know these guys think they're hard, but go  
25          sit in prison for the rest of your life. Forever.

1 A Yes.

2 Q Okay. And then Page 50, Line 28, Sergeant Rabas  
3 says: Okay. Here what it comes down to, comes down  
4 to you, Phong and Paul. And you say: That's what it  
5 comes down to.

6 A Yes.

7 Q And then the picture of the gun in the hand, that  
8 comes up there, we've already talked about that?

9 A Correct.

10 Q Page 61, Line -- you say: Dude, I don't know any of  
11 these guys -- this is Line 43. I don't know any of  
12 these guys, and you know what, everyone is telling me  
13 you guys did it. Everybody. Right?

14 A Correct.

15 Q Page 62, Line 30, Sergeant Rabas says: We're not  
16 lying to you, I don't -- I'm giving you an  
17 opportunity, dude. I'm giving you the opportunity to  
18 stay out of prison.

19 A Yes.

20 Q Page 63, beginning at Line 16, Sergeant Rabas says:  
21 Okay. Our DA office is like we're going to take  
22 everybody down. If they're not cooperating, if  
23 they're not giving you everything, and if they lie to  
24 you.

25 A Yes.

1 Q And Joe says: I'm just telling you everything I  
2 know. And Sergeant Rabas continues: I'm just  
3 telling you what our DA's office --

4 ATTORNEY SCHNEIDER: Judge, can I approach?

5 THE COURT: You may.

6 (Bench conference.)

7 Q (BY ATTORNEY VISHNY) Now I just want to make this  
8 clear, the District Attorney's office had not really  
9 said that to you and Sergeant Rabas, right?

10 A No. We had -- we had been ongoing, you know, stuff.  
11 I mean this is a common -- common theme when we deal  
12 with the DA's office, that if people don't cooperate,  
13 if they're involved in a serious crime and they're  
14 covering stuff or destroying evidence, of course  
15 they're going to get charged.

16 Q Well, no, I understand that, but you hadn't  
17 specifically said to the DA's office Joe Thor is  
18 going to be charged or Phong Lee is going to be  
19 charged if they don't cooperate. There had not been  
20 those specific discussions, had there?

21 A I don't believe so, no.

22 Q All right.

23 A But that's what you do.

24 Q And you know that sometimes you bluff when you're  
25 doing interrogations?



1 A That's not a bluff.

2 Q Okay. That's not a bluff?

3 A I don't believe so, no.

4 Q And then you say on Page -- the same page going to  
5 Line 24: Anyone that hides, anyone that lies to him,  
6 I'm going after everyone of them. Everyone of them.

7 A I'm sorry.

8 Q Sergeant Rabas says, maybe I misspoke: Anyone that  
9 hides, anyone that lies to him, I'm going after  
10 everyone of them. Everyone of them.

11 A I believe what he meant to say is anyone who lies for  
12 him.

13 Q I see. So either that's an error in the transcript  
14 or misspeaking apparently.

15 A Probably.

16 Q And it's minor, right?

17 A Um-hum.

18 Q And on Line 30 you say to him, after Sergeant Rabas  
19 talks about this anyone who lies, you say to him:  
20 You've got a lot to lose.

21 A Yes.

22 Q Turning to Page 64 on Line 44, Sergeant Rabas says:  
23 I know. That's what I said. I think you're a nice  
24 guy. Why do you want to spend the rest of your life  
25 in prison and lying. Right?

1 A Yes.

2 Q Page 68, Line 13. Sorry. Actually I'll start a  
3 little earlier to set it in context.

4 Sergeant Rabas says: Don't help us. Help  
5 yourself.

6 A You say: Yeah.

7 Q Rabas: Because we're not the ones who are going to  
8 end up in prison. Right?

9 A Correct.

10 Q And in fact you tell him later that you have a  
11 picture of him running out with the guy who's got a  
12 gun and that he'll see it in court eventually. Do  
13 you remember that or do you need me to refresh your  
14 memory with the transcript?

15 A I don't remember saying it, but I'll take your word  
16 for it.

17 Q Okay. You also tell him that he's got a certain time  
18 limit to tell you this. Do you remember doing  
19 that?

20 A No.

21 Q Okay. Page 76, Line 36. Just to set in context, at  
22 32, Rabas says: You know we're going talk to Paul.  
23 And Joe says: Yes. And then Sergeant Rabas says:  
24 Remember I told you, today is your day, because after  
25 our interview is done -- and you say: It's like a

1 bus, man, whoever gets on the bus first gets the best  
2 seat. And Sergeant Rabas again says: Today it's it.  
3 Right?

4 A Yes.

5 Q Do you recall telling him -- talking about that there  
6 were check marks against him and either he's going to  
7 be a witness or he's going to be party to the crime?  
8 Do you recall saying that or do I need to look at the  
9 transcript?

10 A I do. I think -- I think I said some stuff before  
11 that too that was kind of involved in that.

12 Q Right. Do you remember Sergeant Rabas asking him if  
13 he wanted to spend that much time away from his  
14 family because that was going to be what happened?

15 A I don't recall that, no.

16 Q Page 152, Line 1. After Sergeant Rabas says, you  
17 know, you were there, I wasn't - I'm paraphrasing,  
18 not the exact words. Sergeant Rabas says: You  
19 actually see the gun going off. Now again I point to  
20 this. Because you could be either this or this.  
21 Because you were one of the two of these, you're one  
22 of the two of these. Do you remember that?

23 And then you -- Joe says: I am this, what am I.  
24 And you say: You've only got two options, one or the  
25 other. Do you recall that?

1 A Yes, ma'am.

2 Q And what you're referring to is his two options are  
3 he can either be a witness or he can be a party to  
4 the crime and get charged, correct?

5 A I believe so, yes.

6 Q All right. And then very shortly after that on the  
7 next page, 153, Line 1, you say: How do you think  
8 all of this stuff is going to affect you for the rest  
9 of your life. You think you're worried about one  
10 court case, think about going down for 25 to -- and  
11 was that life? It's inaudible in the transcript.

12 A I'm not sure.

13 Q You don't know if you said 25 to 50, 25 to life, but  
14 from the context it appears you said something along  
15 those lines?

16 A Probably, yes.

17 Q Okay. Now, and Sergeant Rabas, you remember him  
18 telling Joe that he was missing an opportunity  
19 because he can't guarantee that Joe might not get  
20 charged, right?

21 A Again, I don't know.

22 Q Page 204, Line 26. Sergeant Rabas says: And you  
23 talk about helping us, you're helping yourself.  
24 Right?

25 A Correct.

1 Q Page 204 --

2 A Sorry.

3 Q That's okay. Line 45. What is said by Sergeant  
4 Rabas: Decision day as far as arrests are going to  
5 happen are going to happen probably fairly quick.  
6 Right?

7 A Yes.

8 Q So the context of that is Sergeant Rabas is saying  
9 you better decide if you're a witness or a suspect  
10 because we're going to be deciding pretty quickly  
11 here who we're going to arrest?

12 A Correct.

13 Q All right. Now, we talked a little earlier about  
14 contamination, right, we talked about it in the  
15 context of eyewitness identification?

16 A Photo lineups.

17 Q Photo lineups, right?

18 A Yes.

19 Q And I'm trying to make this a little neater, but  
20 before we get to this, now -- and you agreed with me  
21 that it's really important when somebody identifies  
22 someone that it be their own memory, not having it be  
23 contaminated by a police officer, right?

24 A No, I think what I said was that if I'm the  
25 investigating officer, before I would have somebody

1 do a photo lineup, I would of course review what the  
2 person looks like, what -- if they have scars, marks,  
3 tattoos.

4 Q I don't mean to be rude and cut you off, but in the  
5 interest of trying to get through this a little more  
6 quickly, you talked about how a different officer  
7 shows the pictures because you don't want it to be  
8 the witness -- their memory should not be influenced  
9 or contaminated by the police officer who knows who  
10 the suspect is, that's what I'm referring to.

11 A Yes, ma'am.

12 Q All right. Now -- now, in this, one of the things  
13 that was done -- before I get to contamination, Page  
14 29, Line 12.

15 ATTORNEY SCHNEIDER: Is this back on in  
16 that same big one?

17 ATTORNEY VISHNY: Yeah, yeah. We're still  
18 in the same transcript. Page 29, Line 12. Yeah. We  
19 have a little ways to go still, but I promise it  
20 won't go on forever. It won't nearly be as long as  
21 the interrogation was.

22 Q (BY ATTORNEY VISHNY) All right. Now, Page 29, Line  
23 12. You know, we've already actually reviewed some  
24 of that about having the gun in the hand, right, Line  
25 12, we've already --

1 A Yes, ma'am.

2 Q -- quoted that. And we -- I don't know if we quoted,  
3 but about making a decision, you want to be part of  
4 this or go down with the guy, right?

5 A Right.

6 Q And page -- and then there's discussion clearly that  
7 Paul has the gun in the hand, right?

8 A Where is that?

9 Q Right here. Wait a second. That's a different page.  
10 Right here, yes, Line 30, then why does he have a gun  
11 in his hand. We've already talked about that,  
12 correct?

13 A I don't think so.

14 Q Okay. Maybe we didn't then. I'll make sure I read  
15 that to the jury at Line 30. Then why does he got a  
16 gun in his hand. It's not -- like I said, this isn't  
17 a complicated case. If you're at a shooting where a  
18 guy just gets shot in the head and about two seconds  
19 later he's seen with a gun in his hand, he shot him,  
20 that's the guy, stop protecting him. Right?

21 A Yes.

22 Q And you mention on Page 56 -- again there is mention  
23 that it's very clear that Paul had the gun in his  
24 hand at Line 33. Let me get to that. You said: He  
25 has the gun and it's on video. It's very clear it's

1 a gun. Right?

2 A Yes, ma'am.

3 Q Okay. And then there's some discussion at the bottom  
4 of the page, starting Page 4, you say: The very --  
5 the video --

6 ATTORNEY SCHNEIDER: Hold on. You're back  
7 on 43?

8 ATTORNEY VISHNY: No. Same page. Line 43.

9 Q (BY ATTORNEY SCHNEIDER) And I'm doing this to put in  
10 context. The video is very clear and shows he's got  
11 his hands -- and then you say: When he runs, guess  
12 where his hand is. You remember saying that?

13 A Yes, ma'am.

14 Q And Joe says: Where. And you tell him it's in his  
15 pocket. I'm right on the next page. You know why  
16 it's in his pocket, because he's got a gun in his  
17 hand and he's holding on to it so it doesn't fly out  
18 of his pocket. Joe says: See, I did not know that.  
19 I did not see that. Which would be true because on  
20 the video you can tell Joe is down the block.

21 A Joe is way faster.

22 Q Right. So he doesn't have eyes in the back of his  
23 head and he's not looking behind him on the video,  
24 right?

25 A Right.



1 Q So you're telling him, we're telling you that now.

2 You're telling him what the evidence is in this case.

3 A No, I'm telling him what I saw on video.

4 Q Okay. So what you saw on video isn't the evidence in  
5 this case?

6 A No, I think it's a part of it.

7 Q Okay. So you are telling him a part of what's the  
8 evidence in this case.

9 A When we do interviews many times we give a little bit  
10 of evidence.

11 Q Well there's certain things you're not supposed to  
12 give, you're supposed to have some holdbacks,  
13 right?

14 A Sometimes.

15 Q Okay. Like telling somebody what caliber of a gun  
16 was used? That would be something that --  
17 information you don't want to give, right?

18 A No. Not necessarily true.

19 Q You think it's okay to do that?

20 A Depending on the case, sure.

21 Q So apparently you thought it was okay in this case?

22 A I must have. I did it.

23 Q That would be true.

24 So Page 23 you say to him: This guy was shot at  
25 point blank range, meaning it was right on him,

1 meaning the shot was not from -- and then it gets cut  
2 off. So you also tell him that the shot occurred at  
3 point blank range, right?

4 A Yes.

5 Q And at Page 60 -- skip that one.

6 Okay. I'm sorry. Page 80. Joe says to you,  
7 and he's referring to the picture, he says: It  
8 doesn't look like a gun. Would a gun be that small.  
9 And you said: Yeah, it would be. It's a .25. He  
10 says: Looks like -- whatever he's saying, and you  
11 say: Small gun. He says: Like how big is that.  
12 And you say: Small, not even the size of your hand.  
13 And then Joe says: I don't know, it could be a gun.  
14 Let me see again. Right? That's what was said,  
15 right?

16 A Yes, ma'am.

17 Q So he is adopting what you are suggesting?

18 A From the evidence that I showed, yes.

19 Q Okay. And on Page 147, Line 31, you say: A contact  
20 shot is this, this is a contact shot. So you tell  
21 him that it's a contact shot at that time, right?

22 A Yes. And the reason I'm doing that is because we're  
23 talking about positioning and where he was at and  
24 where Paul and everything was at.

25 Q Right. So you're telling him what the positioning

1 was at the time. This is not on video, right?

2 A The --

3 Q The actual shooting is not on video.

4 A Correct.

5 Q So you're telling him it's a contact shot.

6 A Um-hum.

7 Q And then on Page 50, again you say: This gun is this  
8 big, that's all, it's a little .25. So you again  
9 tell him it's a .25.

10 A Yes.

11 Q Okay. I think that's enough for this transcript.

12 A I think so too.

13 ATTORNEY VISHNY: Just looking at my notes  
14 here.

15 Q Now, the day before you talked to Joe Thor you had  
16 actually been involved in interviewing Phong Lee,  
17 correct?

18 A Yes, ma'am.

19 Q And similar things were said?

20 A No, actually, can I correct that? I interviewed Joe  
21 Thor the first time on the same day that I  
22 interviewed Phong.

23 Q Okay. So I -- so that they're both on December 9th.

24 A Yeah. I interviewed Phong I think in mid-day and  
25 then Joe later that evening and then Joe again the

1 following day.

2 Q Okay. So -- right. We're talking about the first  
3 interview of Joe Thor, but I'm saying this interview  
4 with Phong Lee occurred the day before all this stuff  
5 we were just discussing?

6 A Yes, ma'am.

7 Q That's what I'm trying to establish, that time line.

8 And on that day when you talked to Phong Lee,  
9 you said similar things to Phong Lee that had been  
10 said to Joe Thor, right?

11 A I'm not sure.

12 Q Okay. Page 44.

13 ATTORNEY SCHNEIDER: Which item number are  
14 you on?

15 ATTORNEY VISHNY: It's Exhibit 114, Item  
16 43.

17 ATTORNEY SCHNEIDER: 43. Okay.

18 ATTORNEY VISHNY: Correct.

19 ATTORNEY SCHNEIDER: I don't have line  
20 numbers on these so you're going to have to go --

21 ATTORNEY VISHNY: Yeah. I understand that.  
22 I'm not sure I have line numbers in mine -- I think I  
23 wrote this out before mine had line numbers too.

24 Q (BY ATTORNEY VISHNY) Okay. I'm showing you what's  
25 been marked as Exhibit No. 114. This is the

1 transcript of the interview with Phong Lee with you  
2 and Detective Tauber. Okay?

3 A Yes, ma'am.

4 Q All right. And this also took place over here at the  
5 courthouse, correct?

6 A It did.

7 Q And so what you said to him, reading from Page 44,  
8 Line 29, you can't get over the fact that we've got a  
9 gun -- a guy with a gun in his hand and you're in the  
10 picture. Right?

11 A Yes.

12 Q And he says: I don't care. I'm going to tell you  
13 that they're not the ones who did it. Right?

14 A Yes.

15 Q And then you explain to him: You're not the one, you  
16 don't have to convince us, buddy, you have to  
17 convince the District Attorney's office that's going  
18 to charge you and you've got to convince the jury  
19 that's going to look at this stuff and say of course  
20 he knows. Right?

21 A Yes, ma'am.

22 Q And on page -- I have to --

23 A Can you finish that sentence so -- it's actually kind  
24 of interesting.

25 Q Okay. Sure. I'm happy to finish it. I was just

1           trying to make it go faster.

2           Just like Dan says, you guys bolted from the  
3           scene before anyone else, you hid your clothing, you  
4           lied when you first got here and that you weren't  
5           going down, that you're with some girl and nothing  
6           going on.

7           Because Phong did lie to you when he first got  
8           there, right?

9    A    Yes, ma'am.

10   Q    Told you that he wasn't there, and of course you knew  
11           he was there because of the picture, right?

12   A    And what I'm trying to -- yeah.

13   Q    No. Go ahead. Why don't you say what you're trying  
14           to say.

15   A    No. You did correct me last time. I'm okay.

16   Q    Regardless of what you're trying to say, okay, you  
17           knew he should be challenged, right, because what he  
18           initially told you was clear from the video that it  
19           was not accurate --

20   A    Yes.

21   Q    -- correct? Right.

22           And so you feel that a proper response to this  
23           is to say to him if he doesn't tell you what you --  
24           what is your theory of what happened, that he's going  
25           down for this and he could go away for life. You

1 believe that's a proper interrogation technique?

2 A Well, that's -- actually you're on Page 44 so there's  
3 a lot of stuff that -- you're taking a very  
4 compressed idea that we were already probably 35  
5 minutes into the interview before we came to that.

6 Q Okay. Well, without going endlessly, similar things  
7 were said to Phong Lee about potentially going down  
8 for life or getting prison time that were said to Joe  
9 Thor, is that a fair statement, without going line by  
10 line?

11 A As I said earlier, I believe telling people that  
12 they're going to be held responsible if they're  
13 involved in this crime is the proper thing to do.

14 Q Okay. And in fact -- now for me it's page 58.

15 ATTORNEY VISHNY: Let me go talk to Miss  
16 Schneider because we have different versions of this  
17 unfortunately.

18 ATTORNEY SCHNEIDER: You have a play point?

19 ATTORNEY VISHNY: I'm coming over.

20 ATTORNEY SCHNEIDER: I know.

21 ATTORNEY VISHNY: It's before 1:31.23.

22 Q (BY ATTORNEY SCHNEIDER) Okay. Now, coming back to  
23 this, Page 57, you're with Sergeant Tauber, right?

24 A Yes, ma'am.

25 Q And you basically tell Phong, you know, getting the

1 shooter is easy because not too many times in this  
2 world you would have a video of a crime occurring,  
3 right?

4 A Actually, that's what Dan says.

5 Q Okay. Dan Tauber says that but you're there, you  
6 hear this, right?

7 A Yes, ma'am.

8 Q And he goes on to say: Okay. The hard part of it is  
9 for me to prove to other people that you weren't a  
10 conspiracy to commit that crime.

11 A Yes, ma'am.

12 Q And moving on he says: You weren't party to that  
13 crime in regards to took off and told him prior to  
14 shoot him, kill him, things like -- and then you say:  
15 What's the shooter gonna say when we interview him.  
16 You say that a couple of times, right?

17 A Yes, ma'am.

18 Q And then, you know, he says: You guys have the wrong  
19 people. And then Sergeant Tauber says to him, and  
20 I'm going to paraphrase it here: Look. We've got a  
21 guy going down for an autopsy right now. We're going  
22 to get the bullet angles, we're going to get this  
23 various information, distance, with the gunshot, you  
24 watch CSI, that's easy, right?

25 A I don't see that on this page.



1 Q Well, okay, I'm paraphrasing, but if you want to take  
2 a look at the exact words, why don't you just look.

3 A I can't read that.

4 Q Okay. That's fine.

5 A Okay. Yup.

6 Q Okay. And I'm not going to question you everything  
7 about this transcript because we've already talked  
8 about it with Sergeant Tauber so I don't see any  
9 reason to go through this twice.

10 A Okay.

11 Q Okay?

12 A Yup.

13 ATTORNEY VISHNY: Judge, would it be okay  
14 -- would this be a good place to take the morning  
15 break?

16 THE COURT: It's -- I had hoped to around  
17 10:30, so if this is as good of a breaking point for  
18 you, then this is fine for me so this is close  
19 enough.

20 ATTORNEY SCHNEIDER: Yeah.

21 ATTORNEY VISHNY: Okay. Thanks.

22 (The jury was escorted out of the  
23 courtroom.)

24 (Brief recess.)

25 THE COURT: All right. You may be seated.

1           We did have during the previous session one  
2           sidebar. There was an objection on relevancy  
3           pertaining to the photos. The court did overrule  
4           that objection. That was the only sidebar that we  
5           had of any decision making substance.

6           We can bring in the jury.

7           (The jury was escorted into the courtroom.)

8           THE COURT: All right. Please be seated.

9           Attorney Vishny, whenever you are ready.

10    Q     (BY ATTORNEY VISHNY) Sergeant Tauber, we're going to  
11           move on now -- Schira. Excuse me. I am so sorry.

12    A     I'm the younger, better looking one.

13    Q     You're the -- what did you say?

14    A     I said I'm the younger, better looking one.

15    Q     Well, Sergeant Tauber might take issue with that.

16    A     He does. Trust me.

17    Q     All right. In any event, we're going to talk about  
18           the interrogation of Paul Lee at the Appleton Police  
19           Department --

20    A     Yes, ma'am.

21    Q     -- that was conducted on December 12th beginning at  
22           1:41 a.m., and I'm going to bring you the transcript  
23           which is marked Exhibit 176.

24    A     Okay.

25    Q     And just to preface this by saying you were assigned

1 to interrogate Paul Lee after he had already been  
2 talked to once by Sergeant Rabas and Sergeant Thao,  
3 right?

4 A Yes, ma'am.

5 Q And I think you talked about in direct examination  
6 that you had received some information that there --  
7 that Chong Lee should be looked at as a suspect,  
8 right?

9 A Yes, ma'am.

10 Q And that information was based on a conversation  
11 between a woman named Alyson and a woman named  
12 Lisa talking on the phone, right?

13 A I don't know that.

14 Q Okay. You don't know what it was. But somebody told  
15 you this information, right?

16 A No. What happened was Lieutenant Gostisha --

17 Q Told you?

18 A But he didn't give me any specifics.

19 Q He didn't give you details?

20 A No, ma'am.

21 Q He just said this is a possibility here too, right?

22 A Yes, ma'am.

23 Q Okay. So you and Sergeant Thao go in and start  
24 talking, and I'm not going to belabor this too, too  
25 much because the jury has watched exactly what

1           happened for part of the interrogation.

2     A     Okay.

3     Q     So you recall just kind of generally that Sergeant --  
4           one second.  No.  That's a different one.  All right.

5           Do you recall generally Sergeant Thao talking to  
6           him at length in the beginning of the interrogation  
7           about the fact that, you know, just to kind of  
8           summarize it, these are not exact words, but the  
9           essence of it being that we could have you here,  
10          looking at a very serious charge, and, you know,  
11          explaining how the evidence was strong potentially  
12          against Paul.  If I would just summarize that.  I  
13          don't really want to go through it line by line.

14    A     Sure.  Yes, ma'am.

15    Q     And, you know, in fact I'll just take one line, for  
16          example, on Page 5, Line 20 -- I don't know if it's  
17          205 or 206.  I'm having a hard time.  I think it's  
18          starting at 205.

19                   ATTORNEY VISHNY:  Do you have that, Miss  
20                   Schneider?

21                   ATTORNEY SCHNEIDER:  What page are you at?

22                   ATTORNEY VISHNY:  Page 5, line 206.

23    Q     I'm just going to do this by way of example.  I'm not  
24          going to go through it as much as before.

25                   He starts out by saying:  You're the only one

1           that did not do that at all because you had that gun,  
2           so if you want to go down with this because we have  
3           proved that, you're going to go down hard. Right?

4     A     Yes. Can I just check to see which person?

5     Q     You're Q1. Okay. I think that's Q, right?

6     A     Yes.

7     Q     So that conversation to that effect when on. Again,  
8           the jury has seen it so we're not going to go through  
9           a lot of what they've seen.

10                 Now, at a certain point, as you testified to  
11           yesterday, Chong Lee's name is brought into the  
12           conversation by Sergeant Thao, right?

13    A     Yes, ma'am.

14    Q     And it first comes in in terms of he was there and  
15           Paul is saying, well I didn't see him there.

16    A     I think how Chue Lee Thao brought it in is he was  
17           questioning having Paul give him everyone that he  
18           went down there or knew that was there.

19    Q     Right. He was there. That's what I'm saying. That  
20           he was there at Luna and asking him who was he around  
21           that night.

22    A     Right. And Paul didn't bring his name up.

23    Q     Correct. And then -- so Sergeant Thao brings the  
24           name up, right?

25    A     Correct.

1 Q And so that's the first time the word Chong has come  
2 into the interrogation is it's brought out by  
3 Sergeant Thao, right?

4 A I believe so, yes.

5 Q Okay. So now at -- eventually Sergeant Thao is  
6 saying things to him like, you know, is it you, it's  
7 your brother, it's either one or the other, it's  
8 either you or it's your brother. Is that a fair --  
9 again, not line for line, but a fair  
10 characterization?

11 A I -- I think Chue had asked him at some point  
12 specifically if it was Chong. I don't recall how far  
13 into the interview it was.

14 Q All right. Well, this is a -- let's see. We're on  
15 Page 20 here.

16 A I think it was like an hour and five minute  
17 interview.

18 Q Okay. So the interview, just for the sake of pages,  
19 goes to 49 pages, right?

20 A Yes, ma'am.

21 Q And I don't remember what pages, but just by way of  
22 example, he says to him, on Page 485 -- I'm sorry,  
23 Page 11, Line 485, just again, by way of example, he  
24 says: I'm going to ask you one question. This  
25 question is going to come down to how you want to go

1           about this. Okay? Did Chong do the shooting.

2     A     Yes.

3     Q     Okay. So it's pretty early actually that he starts  
4           mentioning that, fair?

5     A     Yes.

6     Q     And eventually then, you know, after mentioning  
7           several times to Paul -- after Sergeant Thao says  
8           several times to Paul, it's your brother, it's you or  
9           your brother, making those suggestions, eventually  
10          Paul says, yes, it's my brother.

11    A     Yes, ma'am.

12    Q     Okay. And after he does that, on Page 21 -- in  
13          fact --

14    A     Actually, I think I ask him.

15    Q     Okay. That might be. It's Q1.

16    A     Can I read that?

17    Q     I'm going to read it.

18    A     Okay.

19    Q     On Page 20, Line 895. And this is the definitive  
20          moment in this interrogation now where Paul Lee  
21          says -- we're getting to where Paul Lee says, yes,  
22          it's his brother.

23    A     I think he said some stuff previous to that as  
24          well.

25    Q     Yeah. But he didn't directly say it. It's really at

1           this point --

2                       ATTORNEY VISHNY: And I'm going to read  
3           this now, if you're ready. Are you ready in the  
4           right place?

5                       ATTORNEY SCHNEIDER: Yup.

6       Q       (BY ATTORNEY VISHNY) You've given every opportunity,  
7           every cue that your brother is the one that did it,  
8           but what's stopping you is that your heart is just  
9           not allowing you to tell us that. So, Paul, look at  
10          me and tell me that. Was it your brother that shot  
11          him. And then continuing to Page 21, the answer is  
12          yes. Right?

13       A       Yes, ma'am.

14       Q       And the next thing you do is say, okay. You're doing  
15          the right thing. Is that in fact what you said?

16       A       Yes, ma'am.

17       Q       Now, as he goes through and tells you what happened,  
18          what he says is that he never actually saw Chong do  
19          the shooting, but he knows that he did it because he  
20          -- Chong came over on Monday, right?

21                       And I'm going to direct you to Page 26 starting  
22          at Line 1144. If you need to, you can refer back,  
23          but I'm not going to go over it line by line. Right?  
24          And he's --

25       A       You talking about when he said that he came over to



1 his house?

2 Q Right.

3 A Yes, ma'am.

4 Q He tells you he came over on Monday, and so he  
5 doesn't know that Chong did the shooting, he's  
6 saying, because he didn't see it, he didn't see him  
7 right at the time, but what he's saying is Chong came  
8 over to his house a few days later, the next day  
9 actually, but, you know, 36 hours later, whatever.

10 A Following day.

11 Q Yeah. Following day. And told him I did it.

12 A Yes, ma'am.

13 Q Okay. And the words, the exact words that he says  
14 Chong said were, I fucked up. Excuse my language.  
15 Right?

16 A Yes, ma'am.

17 Q There's been a lot of F words.

18 A The bombs, yes.

19 Q Been all over the place.

20 So on Page 28, Line 1563, okay? Wait a second.  
21 I'm sorry. It's Page 35. My mistake.

22 And this is some part that the jury didn't see  
23 so we're going to go over this in more detail. Okay.

24 Now, at that point in the interrogation -- well,  
25 maybe I have the wrong page.

1                   Okay. You want Paul -- you want to have a  
2                   diagram done, correct?

3     A     I believe that's Chue.

4     Q     Okay. So Sergeant Thao is saying I want to have a  
5                   diagram done, and actually Paul Lee doesn't draw the  
6                   diagram, Sergeant Thao draws the diagram?

7     A     You know, I don't recall, I don't specifically  
8                   recall.

9     Q     All right. You don't remember, you don't remember.

10                  But in any event, what we have are these words  
11                  Sergeant Thao says: So obviously everybody that I  
12                  name you knew were there. Okay. I'm just giving you  
13                  an opportunity -- I'm just kind of like you -- throw  
14                  a plan in here for you to draw a diagram as to how  
15                  Josh was approaching you guys and where you were  
16                  positioned and how Chong, um, and the others were  
17                  positioned in relation to, you know, the argument  
18                  when the shooting happened. I left out a few ums and  
19                  ahs.

20     A     Sure.

21     Q     That's what Sergeant Thao says, right?

22     A     Yes, ma'am.

23     Q     So Paul's never said that he saw him there but  
24                  Sergeant Thao wants to put Chong in the diagram,  
25                  right?

1     A     I think -- I don't think he specifically talks about  
2           that, I think he's just trying to get like where  
3           everybody was standing and trying to get an  
4           understanding of where it occurred to see if it  
5           validates and if it's verified through other  
6           investigations and other interviews that we did. I  
7           can't speak for him obviously.

8     Q     Right. But you were there, you heard this, you  
9           witnessed this, right?

10    A     Yeah. And I mean that's what I would be thinking.

11    Q     There is a diagram, there is reference to a diagram  
12           here, right?

13    A     There is, but again, I don't remember -- I don't  
14           remember Chue doing the diagram. I guess I'd have to  
15           see the video.

16    Q     But you can tell from the words here that there's  
17           discussion of the diagram.

18    A     Yes, ma'am.

19    Q     And Sergeant Thao telling Paul Lee he wants to put  
20           Chong in the diagram even though Paul Lee has  
21           previously said he never actually saw Chong at the  
22           time of the shooting, right?

23    A     Yes, ma'am.

24    Q     Okay. Thank you.

25           Now, turning to Page 41.

1                   ATTORNEY VISHNY: I believe it's Line 1827,  
2           Miss Schneider.

3                   ATTORNEY SCHNEIDER: Okay. Thank you.

4                   ATTORNEY VISHNY: Okay.

5    Q       (BY ATTORNEY VISHNY) There is some discussion then.  
6           Okay. Can you see that?

7    A       Yes. Unintelligible?

8    Q       Yeah. Well that's in the middle of it, yeah. You're  
9           talking -- at that point the topic of the discussion  
10          is that you and Sergeant Thao are questioning Paul  
11          Lee about how this whole shooting went down, right?

12   A       Yes.

13   Q       And trying to get his version. Okay?

14                  And one of the things that's said to him  
15          starting at Line 1827 -- even I'll start a little bit  
16          early just to set in context. 1819. You say: So  
17          you heard the shot and you see him go down. Right?

18   A       Yes, ma'am.

19   Q       And then you say: Okay, but you don't see who shoots  
20          him, and he explains that he doesn't, right?

21   A       Right.

22   Q       And then you say: And one of the reasons that we  
23          bring this up here. Here, please stand up. When  
24          they do autopsies, Paul, we can tell how close the  
25          barrel of the gun is to the victim's head, Josh's

1 head.

2 A Yes.

3 Q And you say: Okay. He wasn't shot from right back  
4 here. Remember those words?

5 A Yes.

6 Q And I guess "from right back here", you must have  
7 been at some distance to Paul when you said that,  
8 right?

9 A Yeah, I think we had stood up, and I think we were  
10 kind of trying to figure out positioning of where  
11 everybody was, where Joe was, where Phong was, where  
12 he was.

13 Q Now, as I understand it, you know quite a bit about  
14 firearms, right?

15 A A little bit.

16 Q And even though you're not a firearms examiner per  
17 se, you are aware that when a gun is a contact wound  
18 or a near contact wound or very close to the target  
19 that soot is deposited potentially on a person's body  
20 or clothing if the muzzle of the gun is very close to  
21 the person being shot. You know that, right?

22 A On the victim you're saying?

23 Q Yeah. On the victim --

24 A Yes.

25 Q -- or on anything being shot, could be on clothing.

1           There's a person inside the clothing, I get that.

2     A     There's been studies that are showing it's less and  
3           less prevalent, but yes, I agree with that.

4     Q     And certainly if something is very close, that  
5           unburnt gunpowder leaves little marks on the skin  
6           that are known as stippling, right?

7     A     Yes, ma'am.

8     Q     And that of course as you move farther away, when you  
9           get a couple feet away, three feet, depends on the  
10          gun, but the farther away eventually you don't see  
11          the soot and you don't see the stippling on the  
12          person that was shot or their clothing because it  
13          sprays outward and it's no longer showing up on the  
14          target. Right? You know that.

15    A     Yes, ma'am.

16    Q     That's like firearms 101 basically.

17    A     No, that's actually pretty knowledgeable.

18    Q     All right. Well, firearms 401. Let's call it that.

19           And so you're telling him -- when you're saying,  
20          well, he wasn't shot from right back here, you're  
21          showing him a distance of a few feet, right?

22    A     Yeah. I know we're standing up. I don't know  
23          specifically how close I was to him, but I'm going to  
24          guess within three or four feet.

25    Q     And you know that the smaller the gun, the closer you

1           -- you are when you quit seeing this soot and  
2           stippling type pattern, right?

3     A     Yeah. Barrel length does sometimes matter.

4     Q     So like a nine-millimeter or something like that will  
5           maybe be a little bit farther away?

6     A     It's more barrel length than caliber.

7     Q     Okay. So -- so I should say bigger gun instead of  
8           caliber here.

9     A     Barrel length.

10    Q     .25, small gun as you pointed out earlier, you can  
11          hold it in the palm of your hand.

12    A     Yes. Again, barrel length, how long the barrel is.

13    Q     Okay. Now, so when you're doing this, you know it  
14          wasn't from here, you know it has to have been  
15          farther than what actually happened because you knew  
16          at this point that the gunshot wound was actually a  
17          close wound or near contact.

18    A     I guess you lost me there.

19    Q     Okay. You knew at the time you were interrogating  
20          Paul at this time on the 12th that that gunshot wound  
21          itself was very close range, right?

22    A     That we believe that whoever --

23    Q     Whoever did it.

24    A     -- shot him was very close.

25    Q     Was very close.

1 A Yes, ma'am.

2 Q Right. And that's kind of like point blank, that  
3 means pretty close, right?

4 A Yes, ma'am. That's a common term.

5 Q So when you say that, you're saying, well he wasn't  
6 shot from right back here, so in other words not from  
7 a distance of, you know, whatever, three, four feet,  
8 right?

9 A Yes, ma'am.

10 Q And then you say, okay, when he was shot the barrel  
11 of the gun was probably almost touching, like this  
12 close, so that's why we think you might have seen the  
13 barrel of the hand holding the gun, right?

14 A Yes, ma'am.

15 Q Now, this is long before Paul ever uses the term  
16 later, close to noon, point blank, right?

17 A Yes, ma'am.

18 Q Which could be in some people's opinion a synonym for  
19 what you're telling him.

20 A Did I -- did I say point blank?

21 Q No, no, synonym, synonymous, meaning the same thing,  
22 right?

23 A Yes, but I -- just so we're clear, I didn't say point  
24 blank to him, right?

25 Q No, I'm not suggesting that you did.



1 A Okay.

2 Q Now, I'm going to move on to Exhibit 177.

3 Excuse me. I need a quick drink of water.

4 And this is the interview -- this one starts at  
5 11:58 a.m.

6 A So this is the second interview with Paul?

7 Q Well, I don't know that it's the second one, but it's  
8 one that -- there is some very short contact with  
9 him.

10 A You're right, ma'am. I'm sorry. That's my fault. I  
11 meant that it was my second interview with him, not  
12 that it was a second interview.

13 Q Right, right, right. So this is the one now where  
14 things happen in this one, just to kind of refresh  
15 your memory, he writes a statement, there's pictures  
16 of the e-cigarette, stuff like that.

17 A Yes, ma'am.

18 Q Okay. So here's a transcript of that. Okay?

19 A Yes, ma'am.

20 Q Now turning your page -- attention to Page 2, Line  
21 76, okay? All right. You are talking to him at this  
22 point?

23 A That's his Miranda warning.

24 Q Okay. That's his Miranda warnings, correct?

25 A Yes, ma'am.

1 Q Now after reading him the Miranda warnings and  
2 getting him to sign that he acknowledges them,  
3 right?

4 A Right.

5 Q You go on, and I think on this one you're actually Q,  
6 so this is you this time.

7 A Yes, ma'am.

8 Q Okay. You go on to say: All right. One of the  
9 things, you know, we talked about earlier is how  
10 important it is for us to be able to prove what  
11 you're saying. Okay? Because really now, when you  
12 think about it, we're kind of working for you. Does  
13 that make sense? Because for a while we really  
14 thought you were possibly the shooter. All right?  
15 Now from the statements you're telling us, you know,  
16 you're saying you didn't do that and that -- that  
17 your brother Chong admitted to you and other people  
18 that he was the guy that actually did it. What we  
19 have to be able to do is we have to be able to prove,  
20 because one of the things that happened this morning  
21 is we spoke with the District Attorney's office and  
22 that, and she requested that we do -- we make sure we  
23 can absolutely prove it wasn't you. Right?

24 A Yes, ma'am.

25 Q And you ask him if he understands that and he says

1           yes.

2     A     Yes.

3     Q     And then you go on to have some discussion and  
4           saying: Well, obviously - I'm on the next page now -  
5           your statement helps, right? The problem is your  
6           brother can make a statement it wasn't me. So what  
7           do we have. We've got one brother saying, the other  
8           brother saying, nope, it wasn't me, so that kind of  
9           cancels each other out. Does that make sense?

10    A     Yes.

11    Q     You ask him that, and he says yes.

12           All right. And then I'm going to just skip a  
13           little bit to get through this faster, but looking on  
14           the same page now at Line 103, how do we prove that  
15           it's not really you. How do we prove that it was  
16           actually your brother. Right? And then Paul says:  
17           Well, if he can tell me, the gun is the biggest part,  
18           right?

19    A     Yeah. What I'm asking for there is how to verify it,  
20           and Paul just independently says I'll see if I can  
21           find out where the gun is.

22    Q     Right. So you don't at that point -- at that point,  
23           actually, Chong Lee is in custody, right?

24    A     Paul doesn't know that.

25    Q     Well, let's talk about that. In an earlier

1 discussion you actually -- after he tells you it's  
2 Chong, isn't there a whole discussion with Paul Lee  
3 about where you ask where Chong Lee went? Where he  
4 would be right now? Do you recall that?

5 A I -- I probably was. I don't specifically recall  
6 it.

7 Q Do you recall you and Sergeant Thao kind of talking  
8 to him at length about is he at his mother's and  
9 where can we find him because we're really concerned  
10 about his safety, we want to make sure your brother  
11 is safe?

12 A Yeah. I didn't want him to go kill himself.

13 Q Did you have any reason to think that Chong Lee was  
14 going to commit suicide?

15 A From speaking with him and other people, they said he  
16 was under an enormous amount of stress.

17 Q Okay. Well, without getting into that, you basically  
18 have no personal knowledge that he would be  
19 committing suicide, correct?

20 A I don't know.

21 Q Okay. So what you're trying to do when you're  
22 talking to Paul Lee, you're saying you're trying to  
23 do it out of great concern for Chong Lee, right?

24 A And I also say that I'm also concerned about any law  
25 enforcement that have contact with him.

1 Q Yes. So -- and you're worried about that, but you  
2 want to find out where he is because basically you  
3 guys want to go take the guy into custody, right?

4 A Well, I think you can serve both purposes though.  
5 It's not one thing. I'm looking for -- obviously I'm  
6 concerned about him, I'm concerned about officers  
7 that may encounter him, and also I want to have  
8 contact with him, yes, ma'am.

9 Q Okay. And the contact you wanted to have, you knew  
10 what to do because when that 12:41 a.m. discussion  
11 was done, you went and drafted a search warrant so  
12 you could go search his house and take him into  
13 custody, right?

14 A Yes, ma'am.

15 Q And so, in other words, he was under arrest at that  
16 point when he was taken out of his house.

17 A When he was taken out of his house?

18 Q Yeah.

19 A We took him into custody.

20 Q He wasn't free to leave anymore, right?

21 A Um-hum.

22 Q And so moving back over to this, talking about how  
23 you can prove it's Chong, so then Paul says, well, he  
24 just told me he stopped by Joe Thor's. Right?

25 A Yes.

1 Q Okay. Now right before he says this --

2 ATTORNEY SCHNEIDER: I'm sorry. What page  
3 and line?

4 ATTORNEY VISHNY: I'm sorry. Still Page 3.  
5 That was Line 112. Just going back a couple lines.

6 Q (BY ATTORNEY VISHNY) There had been some discussion  
7 of that earlier in the earlier talk where, I mean,  
8 and you say he said something to Joe Thor, right? So  
9 Paul had referred to that earlier, that Chong had  
10 said something to Joe Thor. You remember that in the  
11 first interrogation? Not the first one but the first  
12 one on December 12th, the 12:41 a.m. one.

13 A I'm -- I guess I'm kind of confused on it. Are you  
14 asking if Paul said to me that Chong said something  
15 to Joe Thor previously?

16 Q Yeah. At 12:41 when you guys were questioning him,  
17 you know, saying -- you were asking, well did he tell  
18 anybody else he had done the shooting, and what Paul  
19 told you was that Chong had gone to Joe Thor's house,  
20 right?

21 A Yes, ma'am, I do remember that.

22 Q And that Chong had told Joe Thor about this, right?

23 A I don't know specifically, but I -- I think so,  
24 yes.

25 Q Okay. But Chong had -- but Paul had never brought up

1           that Chong had told Phong Lee about it, correct? It  
2           was just Joe.

3     A     I believe so, yes.

4     Q     Okay.

5     A     Well, actually, no, hold on here. This is on the  
6           second interview, right?

7     Q     Yeah.

8     A     I believe -- no.

9     Q     Do you remember?

10    A     No. I believe that he -- I believe that he said in  
11           the second interview that -- that -- yeah, actually,  
12           now I do think about this. I think in the second  
13           interview he said that Chong ended up coming to Joe's  
14           -- Thor's house and saying this in front of Phong and  
15           Joe.

16    Q     Well actually what Paul said was that Chong came to  
17           Joe's but he didn't put Phong as hearing the  
18           statement, he just talks about Joe hearing the  
19           statement, did he?

20    A     No, I think he did.

21    Q     All right. One minute.

22    A     Yeah, actually, because -- yeah, no, I'm pretty sure  
23           he did, ma'am.

24    Q     I didn't mean to turn my back on you. I don't want  
25           to be rude.

1 A No. I'm just thinking about what you said. Yeah.

2 I'm pretty sure he did.

3 Q Okay. Well, we'll double-check it. Maybe I'm wrong.

4 A No. I'm positive. I'm positive he did.

5 Q You're positive. Okay.

6 A Yes.

7 Q All right. Well, we'll see if you're right or wrong.

8 But eventually we do know --

9 A I think we can tell right from the report. It should  
10 be right in here, shouldn't it?

11 Q Well this is a transcript of the very last  
12 discussion. Okay? Okay. Actually, he says that in  
13 this discussion.

14 A Right. This is the one we're talking about.

15 ATTORNEY VISHNY: This is Page 5, Miss  
16 Schneider, Line 188. Okay?

17 A Yeah. Right there.

18 Q Right. So --

19 A It says: Okay. So Phong would have heard that too.  
20 Yeah.

21 Q Okay. But before this, when he talked to you at the  
22 12:41 interview, he had not brought up Phong's name  
23 until this later one, right? That's what I'm trying  
24 to ask you.

25 A But was -- I'm sorry. But this is the one we're



1 talking about.

2 Q Well, I was trying to talk to you about the other  
3 one, but I want to make sure absolutely that I'm not  
4 confusing you. Okay?

5 A Too late.

6 Q Well then let me try to assist.

7 At 12:41, during that interrogation with Paul  
8 Lee, he never brought up Phong's name, he just said  
9 that Chong also told Joe, right?

10 A I believe so, yes.

11 Q Okay. And then later now, you know, eleven hours  
12 later, now he tells that you Phong was also there.  
13 He had never brought that up before, correct?

14 A Yes, ma'am.

15 Q All right. So -- and -- okay. And then -- so for  
16 the first time now Paul Lee is telling you on Page 5,  
17 Line 188, we are in Joe's house and then probably  
18 like 30 minutes to an hour he showed up. And then  
19 you say: Okay. What happened. And Paul says: And  
20 then he just said he just fucked up. And then -- and  
21 then you say: He said he fucked up in front of  
22 everybody else there, and he says yes. Right?

23 A Yes.

24 Q So then you say: Okay. Would Phong have heard that  
25 too. And he says: Yes. But Phong was in shock. He

1           wasn't even paying any attention anymore. Right?

2           That's him who says that.

3     A     Right.

4     Q     And then you go on and ask -- and so it's continued  
5           conversation kind of along those lines.

6     A     Yes, ma'am.

7     Q     All right. So going to the next page, Page 6, after  
8           some discussion about this -- well, Page 6, at the  
9           top, you say -- after Line 1 you say: Well, how do I  
10          prove you're innocent, man. I mean I've got to be  
11          able to prove it. And you tell him: I got to prove  
12          it through physical evidence or witnesses or  
13          statements. Right?

14    A     Yes, ma'am.

15    Q     And I have to be able to show that.

16    A     Right.

17    Q     And then what you say to him at Line 234 is you say:  
18          I -- so we got to -- we got to overcome. We've built  
19          this great case against you, now all we got to do is  
20          we got to get rid of that case to show that it wasn't  
21          you, that in fact it was your brother, so you've  
22          gotta help us.

23    A     Yes. I said that because, again, at that time when  
24          we're doing those interviews, my belief was that  
25          Phong was either -- I'm sorry, Paul was either a

1 witness, knew what was going on, or he was the  
2 shooter. That was my belief.

3 Q Okay. On Page 8, Line 233 -- no, wait a minute. I'm  
4 sorry. 332. Okay. Do you -- let's go back to 328.  
5 You said: Do you know who dropped him or you don't  
6 know. And then he says: No, we were in the  
7 basement. And then he says: So when you guys are in  
8 the basement, just the four of you now, okay. And he  
9 says: Three of us, oh, four, oh, Chong, okay. It's  
10 not you, I'm sorry, it's Sergeant Thao, Q1. What was  
11 the discussion. I mean obviously he say he fucked  
12 up, and he says, yeah, and he says, right, he shot  
13 the guy, and he says, yeah. Okay. He said that to  
14 you guys, yeah. Right?

15 A Yes, ma'am.

16 Q All right. Now, on Page 17 at 747, okay, this is  
17 kind of getting a little bit farther down the road so  
18 now we're on Page 17 out of 29. So kind of smack in  
19 the middle.

20 A Okay.

21 Q So what you say is, move forward. This is line 747.

22 ATTORNEY VISHNY: You have that, Miss  
23 Schneider?

24 ATTORNEY SCHNEIDER: Yes.

25 Q (BY ATTORNEY VISHNY) So Phong and Joe, we may ask

1           you to talk to these guys and just say, listen, hey,  
2           I need, you know, you guys are my friends. I need  
3           help. I can't go to prison for the rest of my life  
4           because of something my brother did. Okay. And, you  
5           know, we don't -- we don't believe that this is a  
6           conspiracy that you guys were planning to do this, we  
7           don't see any of that, what we see is a terrible  
8           tragedy that happened in the blink of an eye, but you  
9           got to get those guys to go to bat for you. You said  
10          that, right?

11        A    Yeah. What I was thinking at that point was that  
12            obviously anytime that we can corroborate evidence,  
13            that we can verify information, and if these guys at  
14            that point hadn't told us the truth, maybe we could  
15            set up a one-party consent phone call, maybe we could  
16            do something like that.

17        Q    You're not talking about a one-party consent phone  
18            call here. Those words are never mentioned, are  
19            they?

20        A    But that's what I'm thinking. It's not going to show  
21            what I'm thinking.

22        Q    We're going to talk about what you're communicating,  
23            not what's inside your head, because we can all  
24            agree --

25        A    Well --

1 Q -- we can't read each other's minds.

2 A No, I don't think so.

3 THE COURT: Just remember it's one at a  
4 time. You can't both speak. My court reporter needs  
5 to be able to take down everyone.

6 Q (BY ATTORNEY VISHNY) We can all agree we can't read  
7 each other's minds, right?

8 A Correct.

9 Q I mean I could be thinking about lunch right now and  
10 you would have no idea, right?

11 A Correct.

12 Q Okay. And I don't know what's in your mind, I can  
13 only talk about your words. Fair?

14 A But you're talking about my words and I know what I  
15 was thinking.

16 Q Right. But we're talking about what you're  
17 communicating to Paul Lee. That's the -- what I'm  
18 questioning you about.

19 A Sure.

20 Q Not what's in your head.

21 A I understand.

22 Q All right. So after you tell him that, you ask him  
23 because you want to make sure he knows what you're  
24 talking about. Do you know that expression go to  
25 bat, right?

1 A Yes.

2 Q And he clearly understands when you say that because  
3 his next answer is: I got to -- I got to go talk to  
4 Joe. Right?

5 A Yes, ma'am.

6 Q And you say: Yeah, yeah, and we don't want him to  
7 lie to us. I don't want you to go there and have him  
8 lie to us, just tell him to be truthful. Besides  
9 those two guys, anybody you can think of? Right?

10 A Yes, ma'am. Again what I'm looking for is I'm  
11 looking for outside sources that can -- that can  
12 qualify what he said.

13 Q But what you're telling him is go talk to your  
14 friends and get them to back you up.

15 A I would not allow Paul to go talk to somebody unless  
16 we were there or if -- I prefer a one-party consent  
17 phone call.

18 Q Whatever -- you may prefer that, but that's not what  
19 you said to him, right?

20 A But again, common sense is going to say if I'm an  
21 investigator, I would never leave or let someone go  
22 interview someone or talk to somebody because you  
23 can't -- you -- I don't know what's being said. I  
24 want to have a taped conversation.

25 Q Actually at 1:17 p.m. Paul is let out of jail and

1           driven home by you, right?

2     A     I don't know the time, but it sounds about right.

3     Q     Right. And you don't follow him into his house,  
4           right?

5     A     No, ma'am.

6     Q     You're not tape recording his phone calls, right?

7     A     Correct.

8     Q     You don't have like a wire tap order, right?

9     A     Correct.

10    Q     So after 1:17 or the time he's dropped off you don't  
11           know what he's doing or who he's saying to other  
12           people, do you?

13    A     No.

14    Q     You have no idea if the first thing he does is get on  
15           the phone with his buddies, hey, Joe, you got to say  
16           this, hey, Phong, you got to say that. You don't  
17           know that, do you?

18    A     No, ma'am.

19    Q     Okay. Now Page 28, let's talk about his written  
20           statement for a minute. Okay?

21    A     Sure.

22    Q     All right. Yesterday you talked about the written  
23           statement, and what you say to him, you know, and  
24           this is after telling him, you know, how to put his  
25           name, address, date and stuff like that?

1 A Right.

2 Q Mechanical stuff. You say: I'm not going to put any  
3 words in your head, but what you told me is your  
4 brother Chong, I'm sorry, Chong Lee had a gun on him.  
5 And he says: Uh-huh.

6 ATTORNEY SCHNEIDER: I'm sorry. What page?

7 ATTORNEY VISHNY: Page 28 right at the top.  
8 First line.

9 ATTORNEY SCHNEIDER: Okay.

10 Q (BY ATTORNEY VISHNY) Okay. And you say: You got in  
11 an altercation with a guy by the name of Josh at  
12 Luna. While you were kind of struggling with the  
13 guy, fighting with the guy, Chong stepped up, shot  
14 him in the side of the head, you guys ran. Roughly  
15 an hour, hour-and-a-half later Chong came to Joe  
16 Thor's house where he admitted to you and Joe Thor  
17 and to Phong Lee that he fucked up, that he's going  
18 to go for a -- away for a while and he shot that guy.  
19 You say: Is that about right.

20 A Yes, ma'am.

21 Q All right. And it's shortly after that that he  
22 actually sits down and writes the statement, correct?

23 A Yes, ma'am.

24 Q And you want him to say there that Chong stepped up,  
25 shot him to the side of the head. That's one of the



1 things you specifically tell him you want in that  
2 statement?

3 A Actually, what I did there is I -- all I did is again  
4 reiterate what he has told me throughout the  
5 interview.

6 Q Okay. But you could agree that some people might  
7 call that coaching him.

8 A No.

9 Q Even if you don't?

10 A I don't. I don't agree with that.

11 Q Okay. That's fine. But he's never told you he  
12 actually saw Chong shoot him in the head, he just  
13 told him later at Joe's that he fucked up.

14 A No. He said all of these things. Throughout the  
15 interview I'm pretty sure he said all of these things  
16 to us.

17 Q Actually, he never did say that he saw Chong shoot  
18 him.

19 A No, you're right.

20 Q He never said that, did he?

21 A No, ma'am. I believe what he said is he came from  
22 the bar. He came -- he came from a certain angle  
23 up.

24 Q Okay. Now, it's in this conversation where Paul uses  
25 the expression point blank, that Chong point blanked

1 him, right?

2 A In this interview, ma'am?

3 Q Yeah.

4 A Yes, ma'am.

5 Q And you were not aware that the expression point  
6 blank had been used with Paul earlier by other  
7 people, other investigators. You didn't know that,  
8 right?

9 A No, I didn't know that. Who? When was that?

10 Q Well, I don't answer questions here, I just ask them.  
11 But all the evidence will come in before the jury, I  
12 assure you.

13 A Yes, ma'am.

14 Q Now, during this interrogation, in the beginning --  
15 I'm going back now to the 12:41. All right?

16 A Yes, ma'am.

17 Q What -- when Paul tells you and Sergeant Thao that  
18 he's not the shooter, that Chong told him afterwards,  
19 came over on Monday and told him he'd done it,  
20 what -- you and Sergeant Thao are still questioning  
21 him about having the gun, right --

22 A Yes, ma'am.

23 Q -- for a while?

24 A Yes, ma'am.

25 Q And he keeps telling you, no, what I had in my hand

1 was an e-cigarette.

2 A Yes, ma'am.

3 Q And were you aware that before he had made numerous  
4 statements to Sergeant Rabas that he had nothing in  
5 his hand when he ran out of the bar?

6 A No, ma'am.

7 Q Okay. So -- and were you aware that the video -- you  
8 can see something distinct in the right hand in the  
9 video, right?

10 A Yes, ma'am.

11 Q It also looks in the video that he may have something  
12 in his left hand as well, correct?

13 A Actually, no, I didn't know that.

14 Q And were you aware that he was running down the  
15 street, that as he left he put his hands into his  
16 pockets and was running away from the scene with his  
17 hands in his pockets the entire time.

18 A Yes, ma'am.

19 Q All right. So you have this -- you noticed the  
20 e-cigarette there, you start thinking that could be  
21 it, and then of course you call in the photographer  
22 to do the same angle, right?

23 A Yes, ma'am.

24 Q As we saw the pictures yesterday, when you do that,  
25 you photograph so that the right hand looks very

1 similar but the photograph does not show Paul Lee's  
2 left hand at all.

3 A I don't recall that.

4 Q All right. You want me to -- well, the thing isn't  
5 plugged in.

6 ATTORNEY VISHNY: They're on a poster  
7 board. Do you know what the exhibit number is?

8 ATTORNEY SCHNEIDER: No, but I can tell you  
9 in a second.

10 ATTORNEY VISHNY: It's probably 150 or  
11 151.

12 ATTORNEY SCHNEIDER: No. It's earlier than  
13 that.

14 THE COURT: I think it's --

15 ATTORNEY SCHNEIDER: 86 through 87 maybe?

16 ATTORNEY VISHNY: Thank you.

17 Q So I'm showing you what was --

18 ATTORNEY SCHNEIDER: No. 78 through 79 I'm  
19 saying.

20 ATTORNEY VISHNY: Thank you very much.

21 ATTORNEY SCHNEIDER: I'm coming to help.

22 ATTORNEY VISHNY: 83 to 85?

23 ATTORNEY SCHNEIDER: Yup.

24 ATTORNEY VISHNY: Oh, okay. I thought you  
25 said 78 to 79.

1 Q (BY ATTORNEY VISHNY) So I'm showing you -- this was  
2 shown in court yesterday, right?

3 A Yes, ma'am.

4 Q So the pictures are taken of Paul Lee wearing what he  
5 says is the same coat holding the item that he says  
6 he had in his hand there, the e-cigarette, and you  
7 tried to shoot it from a similar angle, correct?

8 A Yes, ma'am.

9 Q But you never include his left hand in this picture  
10 and show that, right?

11 A Correct.

12 Q Now, this picture is taken at the Appleton Police  
13 Department where the lighting is good and bright,  
14 right?

15 A Yes, ma'am.

16 Q You never attempted to go to Luna and recreate that  
17 scene with the e-cigarette in his hand and have it  
18 recorded through the Luna video recording system.

19 A Correct.

20 Q Now you notice the e-cigarette was silver, right?

21 A Yes, ma'am.

22 Q All right. And when you were done, the e-cigarette  
23 was taken into evidence, right?

24 A I -- I believe so. I'm not sure, ma'am.

25 Q All right. Well, if it was taken into evidence,

1           wouldn't you be the one to do it since you were  
2           there?

3     A     No. We had evidence technicians that were -- the guy  
4           that took the pictures, he's one of our evidence  
5           guys.

6     Q     He would have been the one to take it then?

7     A     I don't know, ma'am.

8     Q     Okay. So you don't know, you're doing this  
9           investigation and you don't know what's taken into  
10          evidence or not?

11    A     Correct.

12    Q     That's someone else's job?

13    A     No, it's just that I -- that wasn't my job. I was  
14          there to interview.

15    Q     So, now, you said the e-cigarette is metal though,  
16          that much you know, right?

17    A     I believe parts of it are, yes.

18    Q     Okay. Now yesterday -- no. I'll strike that.

19                 Now, speaking of the Luna video, you're not  
20          aware of anybody who attempted to enhance that video,  
21          are you?

22    A     I know that Sergeant Rabas worked tirelessly on that.  
23          I don't know specifically what all he did. That's  
24          not my forte.

25    Q     Okay. All right. Now, you were involved in drafting

1 a number of search warrants in this case?

2 A Yes, ma'am.

3 Q And so one of the search warrants --

4 ATTORNEY VISHNY: Can I have these two  
5 marked?

6 Q So when you talked to Phong Lee the first time, when  
7 you talked to him at the courthouse, you had a search  
8 warrant for his phone, right?

9 A Yes, ma'am.

10 Q Remember that?

11 A I do. I don't know if I wrote that one or if I was  
12 on there or not. I don't recall.

13 Q Well, let's bring up Exhibits No. 180 and -- wait a  
14 second. The second one didn't get marked. Hold on.  
15 Okay. My mistake. I'm sorry.

16 ATTORNEY SCHNEIDER: Attorney Vishny, it's  
17 180, the one that starts with my reference 1223.

18 ATTORNEY VISHNY: I'm going to take a look.  
19 I think so. Yes. 181 starts with 1279.

20 ATTORNEY SCHNEIDER: Okay. Thank you.

21 Q (BY ATTORNEY VISHNY) These are both search warrant  
22 affidavits drafted by you, correct?

23 A Yes, yes, ma'am.

24 Q Okay. And in the search warrant affidavit, you are  
25 asking, in the very first one marked Exhibit 180, you

1           can take a look through if you want, this is asking  
2           for -- this is the search warrant affidavit that was  
3           done that allowed you to take Phong Lee's phone when  
4           you interviewed him the first time, correct?

5     A     I believe so, ma'am.

6     Q     And, in fact, you did another search warrant  
7           affidavit for another phone belonging to Phong Lee  
8           with a different phone number, right?

9     A     It appears to be, ma'am.

10    Q     Okay. So taking his phone away did not disable his  
11          communications or ability to talk on his cell phone,  
12          right, because you found out there's another one that  
13          you got?

14    A     I'm not sure if it was like his brother's phone or  
15          there was something along those lines that he was  
16          using somebody's phone.

17    Q     Okay. Now you recall getting a search warrant for  
18          the telephone of Jenny Lee?

19    A     I do not, no.

20    Q     Okay. For a couple of different phones for Chong  
21          Lee?

22    A     Again, I don't recall.

23    Q     Okay.

24    A     I believe I did.

25    Q     For Lisa Stutzman?



1 A I think I did 20 some search warrants, so I don't  
2 recall specific ones.

3 Q For Hu Lee?

4 A I don't know, ma'am.

5 Q The landline for Lisa Stutzman and Hu Lee --

6 A I don't recall.

7 Q -- were you involved in that? For Alyson Blom?

8 A I don't recall.

9 Q For Joshua Richards?

10 A I don't recall.

11 Q For Brittany Olson?

12 A I don't recall.

13 Q You never did a search warrant for the phone of Joe  
14 Thor, did you?

15 A I don't recall.

16 Q But somebody got a phone from Joe Thor, right?

17 A I think when we were -- I think we did. I think  
18 there was a search warrant for Joe's phone as well,  
19 but I don't believe I was involved in that.

20 Q Were you ever aware -- so other people did search  
21 warrants besides you, right?

22 A Yes, ma'am.

23 Q Did you have any awareness that Joe Thor was  
24 interviewed at some point by Sergeants Rabas and  
25 Leitzinger, in fact on the 12th, and that there was a

1 break in that interview where he went in a house for  
2 about four minutes?

3 A No, ma'am.

4 Q So you didn't know that he went -- at least claimed  
5 he had consulted a telephone, right?

6 A No, ma'am.

7 Q And to your knowledge there was never any search  
8 warrant for the telephone of Tou Shoua Lee?

9 A No, ma'am, I don't --

10 Q And I just want to clarify that these are search  
11 warrants, the list I read you, I was talking about  
12 phones at first with Phong Lee, but you were involved  
13 with search warrants for all records, right?

14 A Yes, ma'am.

15 Q And I want to correct the record because I made a  
16 mistake. The names I just read you, these were  
17 search warrants for call records, not actual phones  
18 themselves?

19 A Yeah. I don't recall, ma'am.

20 Q Okay. But you know what call records are, don't  
21 you?

22 A Yes, ma'am.

23 Q So sometimes when you get a search warrant and you  
24 get somebody's phone you can't tell what's gone on  
25 because people have erased data from the phone,

1 right?

2 A You mean when you physically get the phone?

3 Q Yeah. When you physically get the phone.

4 A Yes, ma'am.

5 Q Sometimes data can be erased, right?

6 A Yes, ma'am.

7 Q Now sometimes it can be recovered using a special  
8 machine that law enforcement departments have --  
9 well, Cellebrite is one name, but there are other  
10 trade names for that kind of equipment, right?

11 A Ma'am, I really don't have a lot of technical  
12 expertise in that area.

13 Q I understand somebody else does that kind of work in  
14 your department.

15 Were you aware after seizing the first phone  
16 from Phong Lee that it was examined and it had been  
17 factory reset?

18 A No, ma'am, I was not aware of that.

19 Q Do you know or are you aware that when a phone is  
20 factory reset it means you can no longer get data  
21 from it?

22 A Again, ma'am, that's outside of my area of  
23 expertise.

24 Q Okay. That's fine. But even when a phone has been  
25 wiped clean, so to speak, you know, or damaged or

1 destroyed, one can get call records to show -- those  
2 can't be changed by the person who opens a phone,  
3 right?

4 A Again, I -- I don't know that.

5 Q All right. So you've never worked with actually  
6 getting phone call data to see who called who or who  
7 has communicated at a particular time?

8 A No, ma'am.

9 Q Okay. But you could agree that that could be very  
10 important information to obtain to verify whether or  
11 not witnesses have communicated with each other,  
12 right?

13 A Yes, ma'am.

14 ATTORNEY VISHNY: Nothing further.

15 THE COURT: Redirect?

16 ATTORNEY SCHNEIDER: I know you would love  
17 me to say I have no questions but I do, so I'm going  
18 to try to start and come back and review some  
19 transcripts in just a little bit, Sergeant Schira.

20 **EXAMINATION OF JOHN SCHIRA**

21 **BY ATTORNEY SCHNEIDER:**

22 Q If a person or if a witness tells you that they saw a  
23 person and they're talking about that person to you  
24 on the news or in the newspaper, is that then a good  
25 idea to do a photo lineup with that person?

1 A No. They've already basically identified the person  
2 through other means.

3 Q Why is it important when you're interviewing a  
4 suspect about something they did to ask the why, why  
5 did you do this or what?

6 A I think there is several reasons for that actually.  
7 I think the why personalizes it. When you ask why,  
8 it's not just giving a person an out but it's an  
9 opportunity for that person to tell you why they did  
10 it. It makes a lot of sense to me.

11 Q And your job as a law enforcement officer is also to  
12 check a case to see if there's self-defense issues,  
13 correct?

14 A Yes, ma'am.

15 Q So that's sometimes the why question?

16 A Yes, ma'am.

17 Q And from your -- I don't have your first page of  
18 questions. 26 years?

19 A No.

20 Q Or 18?

21 A With Appleton, 18.

22 Q 18. 18 years as an officer. When there's a fight or  
23 an altercation, do you ask the why to find out what  
24 the other person was doing prior to?

25 A Yes.

1 Q Or after?

2 A Yes.

3 Q Do you think in most fights you've investigated you  
4 look at or ask about self-defense issues?

5 A Yes.

6 Q Or defense of others?

7 A Yes.

8 Q Chong Lee didn't write a statement, correct?

9 A Correct.

10 Q You were asked questions on cross about written  
11 statements of suspects?

12 A Yes.

13 ATTORNEY VISHNY: Judge, can we approach?

14 THE COURT: You may.

15 (Bench conference.)

16 Q (BY ATTORNEY SCHNEIDER) And you never asked Chong to  
17 write a statement?

18 A He had --

19 Q Right, yes or no, you never asked him to?

20 A Correct.

21 Q Have you had other cases, Sergeant Schira, where  
22 you've investigated situations where guns are  
23 fired?

24 A Yes, ma'am.

25 Q In those other cases, have you had people run from

1 the location where a gunshot was heard?

2 A Yes, ma'am.

3 Q In your experience, when there's an investigation  
4 you've done and there's been a gunshot, have you ever  
5 had a case where no one has run from that scene?  
6 Maybe it's a bad question otherwise.

7 A I've done several, yes, there has been -- there has  
8 been one.

9 Q One?

10 A Yes.

11 Q Okay. There have been more than one where people  
12 run?

13 A Yes, ma'am.

14 Q So it's more often that in your investigations if  
15 there is a gunshot people run?

16 A Oh, almost -- almost always, yes.

17 Q And some of those people through your investigations  
18 had nothing to do with the shooting but they still  
19 ran?

20 A Yes, ma'am.

21 Q In those past cases, have you asked those people why  
22 they ran if they had nothing to do with the  
23 shooting?

24 A Yes.

25 Q And what do they tell you?

1 A Variety of reasons. First of all, scared for their  
2 own safety, don't want to get involved, knew that --  
3 that they had information and that we would -- we  
4 would ask for that information, trying to protect  
5 someone else or that they themselves were involved.

6 Q I want to focus in on some transcripts that were went  
7 through with you. I'm going to first focus on the  
8 transcripts with Joe Thor, but before we look at the  
9 transcripts, the first time you spoke to Joe Thor on  
10 the 9th, and then also the second time on the 10th,  
11 and I think it's more likely on the 10th, you brought  
12 up the fact and you were asked during cross Paul was  
13 running with his hands in his pockets. Do you  
14 remember talking to Joe about that?

15 A Yes, ma'am.

16 Q And even though you asked it of Joe many times, he  
17 didn't end up saying, well that's because he was the  
18 shooter, correct?

19 A Correct.

20 Q Weather again on this night from when you  
21 responded?

22 A I believe I said brutally cold.

23 Q Do you have the transcripts, Sergeant, or are they --

24 A No.

25 Q First we're going to look at 179. I know this is



1           hard because they don't have a date on them, but if I  
2           told you this transcript is of the interview you did  
3           on December 9th, does that seem to be accurate?

4     A     I do. I recognize that.

5     Q     Okay. You were asked a question, and I'm just going  
6           to have to flip pages here because they're not  
7           numbered, okay, so you were asked a question,  
8           Detective, and I'm going to point to you, it's Page 8  
9           about middle of the page where you're talking to Joe  
10          about what happened, and this is where that point  
11          blank reference comes out. Do you see that?

12    A     Yes.

13    Q     Okay. So can you read what you first said to Joe?

14    A     You're standing right there when it happened. You're  
15          -- you're right -- you're right in the mix, you're  
16          right there, point blank on the guy.

17    Q     How does Joe respond?

18    A     No. He was like this, holy shit, holy shit, that's  
19          why I was --

20    Q     What -- do you kind of interrupt him?

21    A     I do. And I say: You're right next to -- right next  
22          to it. You were there when --

23    Q     And how does Joe respond?

24    A     I was this to the wall because I was trapped actually  
25          to tell the truth.

1 Q What do you say next?

2 A But you saw him get shot.

3 Q And what did he say?

4 A I was so scared 'cause -- and I respond with: You  
5 saw him get shot.

6 Q How does he respond?

7 A No. I just saw him fall over, and I was like, holy  
8 shit, what the hell, so I ran.

9 Q And then I'm going to have you -- do you remember  
10 during this interview Joe telling you at that moment  
11 when he's there in this -- he's looking at Josh, he  
12 sees that shot, how he felt?

13 A Yeah. I mean, Joe was -- Joe was traumatized by  
14 that.

15 ATTORNEY VISHNY: Okay. I'm going to  
16 object. Joe may say he was traumatized, but this  
17 detective does not know what was in his mind.

18 ATTORNEY SCHNEIDER: I can ask him a  
19 different question otherwise.

20 THE COURT: That's fine.

21 Q (BY ATTORNEY SCHNEIDER) Did he ever physically get  
22 emotional when he talked about seeing Josh in the  
23 head?

24 A Absolutely. His eyes -- I mean, I was right there.  
25 I was looking in the guy's eyes. His eyes were

1           watering, he was --

2       Q     Did he motion or do anything with his hands when he  
3           talked about seeing Josh's head get struck by the  
4           bullet?

5       A     He did. He like mimed that -- the round hitting  
6           him.

7       Q     And in this first interview with Mr. Thor, I'm  
8           looking now on Page 9 in the middle, does he talk  
9           about how he was feeling?

10      A     Yeah. He says again, I was so scared, though, I -- I  
11           didn't know who shot anything.

12      Q     I'm going to move on.

13                   ATTORNEY SCHNEIDER: And that was from,  
14           just for the record, Exhibit 179.

15      Q     I'm going to shift to - and please take the clip off  
16           the top, if you don't mind, it will be easier for  
17           us - Exhibit 160 which is the longer interview done  
18           on December 10th.

19                   Was he still or did he still express to you on  
20           this date being scared about what he had seen?

21      A     He repeatedly said how scared he was.

22      Q     Okay. If you want to flip, Page 14, Line 11,  
23           starting with 11, if you can, and then just read  
24           through, I'm just going to direct you to Line 17.

25      A     Okay.

1 Q So your starting comments?

2 A I start. I say: So you see him get shot in the  
3 head. And Joe says: That's frickin' scary. I said:  
4 Yeah, I'm sure it is. I can't imagine. Joe says:  
5 I'm still fucking scared to death right now.

6 Q If you want to flip to Page 29 please?

7 A Yes. Okay.

8 Q Actually, I'm going start on Page 28, Line 30.  
9 You're talking about when Joe ran out of Luna,  
10 correct?

11 A Yes, ma'am.

12 Q And you're trying to go through what he did, who he  
13 was with?

14 A Yes.

15 Q Okay. So on Line 30, Page 28, what did you start  
16 saying to him?

17 A I said: You ran out of the building with him.

18 Q Okay. And how did he respond?

19 A No, I didn't.

20 Q When you said "him", who were you referring to?

21 A Paul.

22 Q Okay. Go ahead.

23 A Yeah, you did. Again me.

24 Q And then how did Joe respond?

25 A Phong did not shoot him.

1 Q How did you respond?

2 A I didn't say Phong, did I.

3 Q How does he respond?

4 A Right. I'm serious. Phong did not do that. Okay?

5 Q Your response?

6 A I didn't say Phong, did I.

7 Q What does Joe say?

8 A No, you didn't.

9 Q So what do you then respond back to him?

10 A I said: The other guy did.

11 Q Flip to Page 29. His response?

12 A Paul did not do it -- or Paul did not do it, yes.

13 Q And then how did -- what did Joe say or what did you

14 say back to him?

15 A I said: Yeah, he did.

16 Q And his response?

17 A I'm serious. Paul --

18 Q I say: He's got a gun in his hand.

19 A And Joe responds: No, he didn't.

20 Q And then during cross you asked him, and this would

21 be line -- starting on Line 30, basically you're

22 asking him, Attorney Vishny, about being there,

23 seeing a guy with a gun in his hand. That's the guy.

24 Stop protecting him. And what was Joe's response?

25 Because I don't think you were allowed to give Joe's

1 response, just your topic matter.

2 A He said -- Joe said: I did not see him with it  
3 though.

4 Q So he's saying he did not see anyone with a gun.

5 A Correct.

6 Q Page 56. Again you were asked about your reference.  
7 And this would be on Line 33.

8 A Okay.

9 Q To him having a gun. And I think what you were asked  
10 about, you said, he had a gun in his hand on the  
11 video, it's very clear, it's a gun. How does --

12 A I'm sorry. I lost your line.

13 Q That's okay. I went too fast. Line 33. You were  
14 asked on cross about saying this to Joe. He had in  
15 his hand and on video, it's very clear, it's a gun.  
16 What was Joe's response?

17 A He ran like that the whole time.

18 Q And you say?

19 A No, no, no.

20 Q And what does Joe say? Response?

21 A I did not see. You're not listening.

22 Q And throughout this interview with Joe, he tells you  
23 when you asked or by his own comments Paul was not  
24 the shooter.

25 A Yes.

1 Q And does he also tell you that Phong was not the  
2 shooter?

3 A Yes.

4 Q Okay. If you can go to Line 76 -- or Page 76?

5 A Okay.

6 Q And this is where in the cross Joe was being told --  
7 Sergeant Rabas is making a comment like, today is  
8 your day, it's your interview, today is it, I think  
9 there is reference. Did you literally mean like he  
10 had 24 hours or he only had this day?

11 A No. We're trying to get across to him, it's like you  
12 got to come clean, man, you got to tell us what's  
13 going on.

14 Q And if you flip to Page 77, because you weren't  
15 allowed to give Joe's response, what did he tell you  
16 in response?

17 A I'm just telling you what I saw.

18 Q And more pointed on Line 29, Sergeant Rabas asks him  
19 directly what?

20 A Why did Paul shoot him. Did he tell you that.

21 Q What was Joe's response?

22 A He didn't shoot him. He did not shoot him from what  
23 I saw.

24 Q Page 80 you were asked about references to a gun, and  
25 this is where you're talking about the size of the

1 gun, and you're talking to -- Attorney Vishny had you  
2 read several lines, it's a small gun, not even the  
3 size of your hand. What does Joe say?

4 A I don't know. It could be a gun. Let me see it  
5 again.

6 Q And what do you say?

7 A Why did he shoot him.

8 Q And Joe responded?

9 A He did not shoot him from what I saw.

10 Q And what do you say to him again?

11 A Why did he shoot him.

12 Q And his response?

13 A He did not shoot him from what I saw.

14 Q Page 168 please.

15 A Okay.

16 Q There are probably times when people make references  
17 to how they feel or react that are just pretty much  
18 talking as plainly as you can, right?

19 A Yes.

20 Q Okay. On this page Sergeant Rabas is -- I'm going to  
21 have you look at Line 38, is talking to Joe about how  
22 he was running away. Do you remember that?

23 A Yes.

24 Q And what is his response?

25 A Neal goes: That's probably why you ran fastest you



1           probably ever ran in the first two blocks. And Joe's  
2           response was: I almost pissed my pants to tell you  
3           the truth.

4     Q     In that same conversation he was talking about how he  
5           was scared he heard those shots and saw Josh.

6     A     Yes.

7     Q     Okay. We're not quite done. 204. Here. Way in the  
8           back.

9           You were asked a few questions, and I just again  
10          want to elicit what Joe's responds either you or  
11          Sergeant Rabas to some of those questions.

12    A     Okay.

13    Q     And on Line 26 Sergeant Rabas is talking about --  
14           talking -- you're helping -- you talk about helping  
15           us, you're helping yourself. That's on Line 26?

16    A     Correct.

17    Q     And what does Joe say in response?

18    A     He says: I'll find out what I can.

19    Q     And if you flip to Page 205?

20    A     Okay.

21    Q     Line 11. Or just look at the content starting at the  
22           top of the page.

23    A     Okay.

24    Q     Is it again like finding out, helping us?

25    A     Yes.

1 Q And how does Joe respond on Line 11?

2 A On Line 11 he says: I'll try to find out a way to  
3 help you guys.

4 Q And then on Page 206, Line 30, again you're kind of  
5 concluding your discussion with Joe on this day?

6 A Correct.

7 Q What does he say on Line 30?

8 A Joe says: I'm going to try to find out what I can  
9 before you guys will.

10 Q And when -- this is odd, I'm standing behind you,  
11 this is very odd, but when you finish that interview,  
12 Joe left?

13 A Yes, he did. We -- actually, I think he had laundry.  
14 We actually called the laundromat because he had  
15 stuff in the laundry and we made sure nobody took his  
16 stuff and, yeah, he left.

17 Q Okay. I want to talk about Phong Lee.

18 A Okay.

19 Q First day you spoke to Phong, December 9th?

20 A Yes, ma'am.

21 Q Did he express some concerns about talking to you  
22 about what he knew?

23 A He did.

24 Q You work the street crimes unit?

25 A I did.

1 Q For how many years?

2 A Six years.

3 Q Okay. Was there a specific term or reference Phong  
4 used in that discussion with you?

5 A He did.

6 Q What did he say?

7 A He said that he did not want to be a snitch.

8 Q Did he express concerns about that?

9 A Repeatedly.

10 Q I'm going to show you what's previously marked  
11 State's Exhibit or Exhibit 114.

12 A Okay.

13 Q Can you -- and I think actually Attorney Maier used  
14 it with Phong Lee. That's a transcript of the  
15 discussion you had with him on December 9th?

16 A Yes, ma'am.

17 Q And I think you were asked if you could flip to Page  
18 47 please, Sergeant.

19 A Okay.

20 Q And in this one again you were being -- he was being  
21 asked about the gun and who had the gun in their  
22 hand, correct?

23 A Correct.

24 Q And at this point who had Phong identified being at  
25 Luna with, if you recall?

1 A Specifically on this page or --

2 Q In the context of the interview, did he talk about  
3 Paul?

4 A At this point, I'm not sure. He -- at first he did  
5 not want to tell us.

6 Q Okay.

7 A And we had to convince him to help.

8 ATTORNEY VISHNY: Judge, can we approach  
9 the bench please?

10 THE COURT: You may.

11 (Bench conference.)

12 Q (BY ATTORNEY SCHNEIDER) Are you on Page 47?

13 A Yes, ma'am.

14 Q Okay. So you were asked in cross about line -- I  
15 don't have line numbers on mine, so this will be a  
16 little tricky. I'm going to go behind you. One  
17 second. I found it. Sorry. I didn't mean to  
18 interrupt you.

19 A No, no, you're good.

20 Q On Page 44 it was in the transcript, you were asked a  
21 question on cross about saying to Phong comments  
22 about the gun. Can you read what you said to him?

23 A You can't get over the fact that we got a guy with a  
24 gun in his hand and you're in the picture.

25 Q And how did Phong respond?

1 A I don't care. I'm going to tell you that, they're  
2 not the ones that did it.

3 Q At any point during this discussion with Phong was  
4 Chong's name brought up on December 9th?

5 A Yes.

6 Q In his -- go ahead.

7 A I believe we showed pictures at the end. I don't  
8 think his name was actually brought up. I believe  
9 what was happening is we were just showing  
10 pictures.

11 Q Okay. And you were showing him kind of like the  
12 whole series of pictures?

13 A Yes, ma'am.

14 Q So at this point you hadn't brought up Chong's name  
15 in the interview?

16 A Correct.

17 Q Okay. And then I have another transcript.

18 Do you recall, Sergeant Schira, during that  
19 first interview on December 9th with Phong, does he  
20 identify who the shooter is at all?

21 A No.

22 Q And he talked about he was worried about being a  
23 snitch?

24 A Yes, ma'am.

25 Q Was that something he continued to express to you

1 during that conversation?

2 A He was very concerned about that.

3 Q Let me ask you this, Sergeant Schira. Paul was  
4 initially talked to on the 12th at 1:41, correct?

5 A Yes, ma'am.

6 Q Was there a short period of time when he was also  
7 spoken to at 2:19?

8 A I -- I believe there was.

9 Q Okay. You weren't present for the 2:19 references,  
10 correct?

11 A Correct.

12 Q Do you remember who that was?

13 A It may have been Investigator Thao.

14 Q Okay.

15 A I don't recall.

16 Q Okay. One second please.

17 ATTORNEY SCHNEIDER: It appears the 2:19 section  
18 has not been marked yet so I'm going to mark that.

19 Q (BY ATTORNEY SCHNEIDER) So now I think you have all  
20 three sections.

21 A Okay.

22 Q And one is labeled 12:41 and that's 176?

23 A Yes, ma'am.

24 Q The second one would be 2:19 and that's Exhibit 182?

25 A Okay.

1 Q And then 11:58, Exhibit 177?

2 A Okay.

3 Q Okay. So we'll start these in order.

4 You were asked during cross about the written  
5 statement you asked Paul Lee to write. Do you recall  
6 that?

7 A I do.

8 Q Okay. Just so we don't end up -- Exhibit 122 is the  
9 written statement of Paul Lee?

10 A Yes, ma'am.

11 Q And that's the written statement you obtained?

12 A Yes, ma'am.

13 Q Okay. I'm going to keep that in front of you, but  
14 just so I don't write all over that one --

15 A Okay.

16 Q -- I'm going to put it up on the Elmo as well.

17 THE COURT: Lights down, Attorney  
18 Schneider?

19 ATTORNEY SCHNEIDER: Let's just wait and  
20 see once, Judge.

21 THE COURT: The jury want lights down or --  
22 we're okay. Is that good? You can all see it? All  
23 right.

24 Q (BY ATTORNEY SCHNEIDER) So I want to walk you  
25 through that written statement because on cross you

1           were asked about a quote towards the end, and this  
2           quote comes at a time before you're about to have  
3           Paul write the statement, correct?

4     A     Yes.

5     Q     And before you did that, you summarized some things,  
6           correct?

7     A     Yes, ma'am.

8     Q     And let's first look at -- I'm going to highlight  
9           these one at a time. So I want to look at -- first  
10          what I'm going to highlight which is, while I was in  
11          Luna coming back from the bathroom, me and Josh got  
12          into an argument. Do you see that?

13    A     Yes, ma'am.

14    Q     And it's your recollection that those were things  
15          Paul told you during the course of this interview?

16    A     I do.

17    Q     And he told you those before you ever asked him to  
18          write this written statement?

19    A     Yes.

20    Q     Looking at 12:41 interview, Exhibit 176, can you  
21          please flip to Page 4 -- actually, the bottom of Page  
22          3 please.

23    A     Sure. Okay.

24    Q     Starting at Line 131, this is Paul giving you a  
25          comment, right?



1     A     Yes.

2     Q     And what does he say?

3     A     Like I said, me and unintelligible went to use the

4           bathroom.

5     Q     What's the next thing an officer says?

6     A     Right. And then Paul says: I came back up and that

7           bum came up first.

8     Q     You want to keep going into Page 4?

9     A     I say: Okay.

10    Q     And how does he respond?

11    A     And this white guy came up and talked shit about

12           him.

13    Q     Who -- is that when Paul is talking about coming up

14           from the bathroom and there an argument starts?

15    A     Correct.

16    Q     And it continues on Line 144. And what does he

17           continue to say?

18    A     And then he went into unintelligible. I told him

19           unintelligible, I tell him to stop.

20    Q     If you can flip to Page 8 please.

21    A     8? Okay.

22    Q     Starting with Line 343, this is Paul making a

23           comment?

24    A     Correct.

25    Q     And what does he say?

1 A The truth is that me and Phong, when we use the  
2 bathroom, we came up, Phong came up first.

3 Q What does an officer say?

4 A Okay.

5 Q And then what does Paul continue to tell you?

6 A And then he started talking shit to Phong so I go to  
7 unintelligible and I tell him to stop it, and that's  
8 my guy, you know, we don't know who you are  
9 unintelligible. And I say: Okay.

10 Q What does Paul continue to describe?

11 A And when I turned around, he came and talked shit to  
12 me.

13 Q Okay. So he's continuing to talk about this  
14 argument?

15 A Yes, ma'am.

16 Q The next line that Paul wrote I'm going to highlight  
17 in yellow.

18 A Okay.

19 Q What did Paul write there that's highlighted in  
20 yellow on this statement?

21 A When it got physical, Chong came from Josh's left  
22 side and point blanked Josh.

23 Q 12:41 interview, if you can go to Page 39 please.

24 Yup. 176 exhibit.

25 A Page 39?

1 Q Um-hum.

2 A Okay.

3 ATTORNEY VISHNY: What's the line number?

4 ATTORNEY SCHNEIDER: I'm just finding it.

5 Hold on one second.

6 Q (BY ATTORNEY SCHNEIDER) If you want to start at Line  
7 1733.

8 A Okay.

9 Q This is Paul commenting, correct?

10 A Correct.

11 Q And what does Paul say?

12 A And then like a big -- he said that Josh bum rushed  
13 me.

14 Q How do you respond?

15 A Okay.

16 Q And how does he answer?

17 A And punched me back, and that's when I flew back like  
18 I told you guys, you know. I say: Okay.

19 Q What did Paul continue to tell you?

20 A I step back and I was backed up for like 30 seconds  
21 unintelligible. I say: Okay. He then says: The  
22 shot was fired.

23 Q What do you ask him?

24 A From your brother.

25 Q And his response?

1 A Yeah.

2 Q I'm going to point to Page 42, you're asking him --  
3 or, actually, I think this would be Sergeant Thao, if  
4 he's Q1, at Line 1873. What's the question that Paul  
5 gets asked?

6 A But you think that he's on this -- he's over on this  
7 side.

8 Q Is this at the time you were looking at that written  
9 diagram, if you recall?

10 A I believe so, yes.

11 Q Okay. So when that is asked of him, what is Paul's  
12 response?

13 A He told me he came through the bar.

14 Q And when he says, he told me he came through the bar,  
15 who was he referring to?

16 A Chong.

17 Q And then we're going to -- actually, I want to stay  
18 on this reference, but I'm going to flip to the --  
19 the last interview, 11:58 a.m.

20 A Okay.

21 Q If you it flip to Page 11 please?

22 A Okay. Okay.

23 Q And at the top of the page you're talking about  
24 Chong's jacket, right?

25 A Yes.

1 Q Okay. So then on 461 -- well, actually, to give it  
2 context, can you start with Line 455 and read what's  
3 said there?

4 A Do you think there was any -- do you think there was  
5 any blood splatter on it.

6 Q And that was a question by you?

7 A Yes.

8 Q And how did he respond?

9 A Maybe, I don't know.

10 Q What was said next?

11 A Okay.

12 Q And his answer?

13 A He did say he point blanked him. I say: That's what  
14 he said, he point blanked him. Yeah.

15 Q Okay. Thank you.

16 Next section I'm going to highlight, and I'll  
17 just read it, you can follow along, Sergeant. I just  
18 highlighted the part that says: After leaving Luna  
19 me Joe and Phong walked to Joe's. Do you see those  
20 references?

21 A I do.

22 Q Can you find the 2:19 a.m., the smallest one, Exhibit  
23 182?

24 A Yes.

25 Q Page 7 please?

1 A Okay.

2 Q Okay. So the frame of reference is, and this was  
3 Sergeant Thao, but at Line 288 he's talking about  
4 them being at the dumpster?

5 ATTORNEY VISHNY: I'm sorry. What page are  
6 you on?

7 ATTORNEY SCHNEIDER: Page 7 of the 2:19  
8 a.m. interview.

9 Q Line 292, what question was asked?

10 A Okay. But you guys walked the way -- all the way to  
11 Joe's house, right.

12 Q And what did Paul respond?

13 A Yeah.

14 Q Next sentence I'm going to highlight, Sergeant  
15 Schira, Chong shows up and told us he shot Josh.

16 A Yes, ma'am.

17 Q Okay. So I'm going to walk through some references  
18 that's found within his interview.

19 A Okay.

20 Q I want to start first with your 12:41 interview.

21 A Okay.

22 ATTORNEY VISHNY: Which one?

23 ATTORNEY SCHNEIDER: 12:41, Exhibit 176.

24 Q (BY ATTORNEY SCHNEIDER) You can go to Page 22  
25 please.

1 A Okay.

2 Q Starting on Line 961, that would be -- actually,  
3 your --

4 ATTORNEY VISHNY: I'm sorry. You said Page  
5 22?

6 ATTORNEY SCHNEIDER: Page 22, Line 961.

7 ATTORNEY VISHNY: Okay.

8 Q (BY ATTORNEY SCHNEIDER) Your Q1 is the reference.  
9 So what do you ask Paul at this point?

10 A I -- it says: How do you know that he shot him.

11 Q Go ahead.

12 A He responds: Because he came to my house. I ask  
13 him: Okay. And he told you.

14 Q And what did he respond?

15 A He said he fucked up.

16 Q Same transcript, I'm going to forward to line -- page  
17 first, 26, Line 1154. You're asking him again about  
18 Chong and what the conversation was.

19 A I say to him: Okay. And what did he say to 'ya. He  
20 responds: He just said, eh, Paul, I fucked up.

21 Q Does he continue to talk about that?

22 A Okay. What else. That was --

23 Q Go ahead. How does he answer?

24 A That was it and when I had to go to work and he's  
25 gone. I respond: And when he says I fucked up, how

1 do you know he's talking about shooting him. And he  
2 says: Because he told me he shot the guy.

3 Q Can you read what you asked him next then please?

4 A He did tell you he shot the guy. Did he -- is that  
5 exactly what he said, I fucked up, I shot the guy.

6 Q And then continuing to Page 27, what was Paul's  
7 response?

8 A Yeah.

9 Q When you spoke to him then -- just leave that one  
10 right there. At 11:58 a.m., if you can please flip  
11 to Page 5.

12 A Okay.

13 Q Line 191.

14 ATTORNEY VISHNY: I'm sorry. Just taking  
15 us a second to bring it up on the computer. Page  
16 what?

17 ATTORNEY SCHNEIDER: Five.

18 ATTORNEY VISHNY: Line 191?

19 ATTORNEY SCHNEIDER: Actually I'm going  
20 back it up to Line 188.

21 ATTORNEY VISHNY: Okay.

22 Q (BY ATTORNEY SCHNEIDER) Can you start? This is an  
23 answer Paul gives, correct?

24 A Yes.

25 Q What does he say?



1 A He says: But we were at Joe's house and then  
2 probably like roughly 30 minutes to an hour he showed  
3 up.

4 Q And when he references "he", is he talking about  
5 Chong?

6 A He is.

7 Q Okay. And what did you ask next?

8 A Okay. And then what happened.

9 Q And his response?

10 A And then that's when he say he just fucked up, and  
11 then -- and I respond to that: And did he say that  
12 he fucked up in front of everybody there.

13 Q And what was his response?

14 A He says: Yes, yeah.

15 Q Okay. Then we go to the last sentence then that Paul  
16 wrote. Highlight that in pink then. And it reads:  
17 Chong told me, Joe and Phong that he ditched the gun  
18 and planned on leaving town. Is that what Paul  
19 wrote?

20 A Yes, ma'am.

21 Q 12:41 a.m. interview please.

22 A Okay.

23 Q Line -- Page 32.

24 ATTORNEY VISHNY: I'm sorry?

25 ATTORNEY SCHNEIDER: 12:41 a.m., Page 32.

1 ATTORNEY VISHNY: You said 12:41.

2 ATTORNEY SCHNEIDER: Yes. A.m. We're  
3 flipping back to the first one. Page 32, Line  
4 1410.

5 Q (BY ATTORNEY SCHNEIDER) What does Paul say at that  
6 point?

7 A All Chong told me was he said he ditched the gun  
8 unintelligible.

9 Q And how do you then respond?

10 A He just said he ditched the gun. I'm just going to  
11 kind of tell Chue right here what's going on, because  
12 he had just come back in. And just so you know, Chue  
13 truly does care about you and your family and what's  
14 going to happen. He truly does.

15 Q Okay. I'm just going to fast forward here a little  
16 bit. So you're on question one then. Are you  
17 continuing to fill Chue Thao in?

18 A I am.

19 Q And what did you say?

20 A I said: Chong came over to his house and said that I  
21 fucked up. And then said, I fucked up, I shot the  
22 guy.

23 ATTORNEY VISHNY: I'm sorry. What were  
24 those line numbers?

25 ATTORNEY SCHNEIDER: 1419 to 1420.

1 ATTORNEY VISHNY: Thank you.

2 Q (BY ATTORNEY SCHNEIDER) And then on Line 1424, what  
3 do you say?

4 A I say: And he said after he did that at some point  
5 he went over and told Joe Thor as well. So Joe Thor  
6 is also aware of what happened.

7 Q And then -- and that was 1424 to 1425?

8 A Correct.

9 Q And then you continue to kind of go over with  
10 Sergeant Thao what Paul had been telling you?

11 A Correct.

12 Q Starting on Line 1430, is there a reference to him  
13 talking or you summarizing what he told you about  
14 Chong and the gun?

15 A Yes. I say: And his brother also said that he  
16 ditched the gun someplace but he doesn't know  
17 where.

18 Q And then Chue asks you?

19 A Which brother. And I said: Chong.

20 Q We go to Page 33 -- and Paul is present while you're  
21 talking about this with Sergeant Thao?

22 A Sitting right there with us.

23 Q So then on Page 33, Line 1441, Paul gives another  
24 comment about the gun. And what does he say there?

25 A He said: He never gave me a location but just said

1           that he ditched it.

2       Q     Then if we can flip to the 11:58 interview.   Page 8  
3           please.

4       A     Okay.

5       Q     Starting on Line 341, Page 8, there is a question  
6           asked.   And what's that question?

7       A     Right.   He say he shot the guy.

8       Q     And what was Paul's response?

9       A     Yeah.

10      Q     And the next question from an officer?

11      A     Okay.   He said that to you guys.

12      Q     And his response?

13      A     Yeah.

14      Q     What is asked of him next then?

15      A     Okay.   What else did he say that now needs -- pardon  
16           me again.   Okay.   What else did he say that what now  
17           he needs to do next.   There has to be something.

18      Q     And then I'm going to just look at this.   Sergeant  
19           Schira, that would be you, so that first comment was  
20           made by Sergeant Thao?

21      A     Yes, ma'am.

22      Q     And then Sergeant Schira says what?

23      A     I said:   Was he planning on running, was he -- what  
24           was he planning on doing.

25      Q     And what did he say?

1 A He said he was planning on running but I told him, if  
2 you're so hard, why you gonna run.

3 Q How did he -- can you continue his answer?

4 A He was like, well I fucked up. I shot him. I got to  
5 run.

6 Q And again on Page 363 -- I'm sorry, not -- Page 9,  
7 Line 363. Do you ask him about the gun again?

8 A I do. Okay. Did -- when you said that he dumped the  
9 gun, what do you think he did with it.

10 Q And what was Paul's answer?

11 A He said he just ditched it.

12 Q And the series of comments and questions and answers  
13 came before you asked him to write the statement,  
14 correct?

15 A Yes, ma'am.

16 Q And came before that section you were asked about on  
17 cross where you summarized to him?

18 A Yes, ma'am.

19 Q I just want to go through a couple more things with  
20 you, Sergeant Schira.

21 I'm going to have you just look at the 11:58  
22 a.m. transcript in time.

23 ATTORNEY VISHNY: Page?

24 ATTORNEY SCHNEIDER: We're going to go to  
25 Page 6.

1 ATTORNEY VISHNY: Line?

2 A Okay.

3 ATTORNEY SCHNEIDER: 239.

4 Q (BY ATTORNEY SCHNEIDER) So you were asked on cross,  
5 and if you need to start reading at the top of the  
6 page just to give yourself a frame of reference what  
7 you're talking about with him and just tell me kind  
8 of when you're done with that.

9 A Okay. Okay.

10 Q So at that point you're talking to him about asking  
11 for his help, looking for anything else he can do to  
12 help you, get physical evidence. That's where you  
13 make the comment about getting rid of the case to  
14 show it was you, it was your brother. When you say  
15 that, getting rid of the case to show it wasn't you,  
16 that it was in fact your brother, do you think Paul  
17 had any understanding of the elements of offenses at  
18 all?

19 A No.

20 Q Is that something said in a way that he would  
21 understand?

22 A Street vernacular, yes.

23 Q So after that Paul makes an offer to you, right?

24 A Yes.

25 Q And what does he say?

1 A What he says is --

2 Q And this would be Line 239, just for the record.

3 A Oh, man. Well the only evidence I can get if I went  
4 straight up to Chong and talked to him like, you  
5 know, look, Chong.

6 Q And what is said in response to him?

7 A To go talk to him.

8 Q And what does he say?

9 A Yeah.

10 Q So at that point he had offered to go talk to Chong  
11 for you potentially?

12 A Yes.

13 Q But there was no ability to do that?

14 A He was in the -- he was -- yeah. He was locked up.

15 Q Were you aware at any point, Sergeant Schira, that  
16 while at Norka Paul brought up the topic of the  
17 e-cigarette?

18 A No, I was not aware of that.

19 Q So when you're asking him in this interview at APD  
20 about the item in his hand, you didn't realize he had  
21 already mentioned an e-cigarette?

22 A I did not know that.

23 Q Okay. And even if we have phone records, if we have  
24 a phone record and we show a call was placed to  
25 another number, does it truly tell us who was on

1           either the calling end or the receiving end?

2     A     I believe it does not.

3     Q     In your past experience, do people always carry just  
4           their own phones?

5     A     Not always, no.

6     Q     And even if we had records to show that there was a  
7           lengthy call at any given time, we don't know who is  
8           on either end, whether it's a two-minute call or a  
9           30-minute call?

10    A     Again, I'm not an expert in that area, but I believe,  
11           no, it's simply the length of time.

12    Q     And this -- this group of people that we're talking  
13           about, whether it be Alyson Blom, Joe, Paul, Phong,  
14           Chong, even Lisa Stutzman, Hu Lee, you're all aware  
15           of all of those people, correct?

16    A     Yes.

17    Q     Bobby Jo Stutzman?

18    A     Yes.

19    Q     They all knew each other, and many of them were  
20           related, correct?

21    A     That was the difficulties in this case. They all  
22           knew each other.

23    Q     So probably communicated with each other regularly  
24           I'm told?

25    A     Yes.



1 ATTORNEY SCHNEIDER: I don't have any other  
2 questions.

3 THE COURT: Recross.

4 ATTORNEY VISHNY: Thank you.

5 Can I have the 12:41 transcript please?

6 THE WITNESS: Ma'am, do you want these  
7 back?

8 ATTORNEY SCHNEIDER: Just leave them right  
9 up there.

10 ATTORNEY VISHNY: Can you please put them  
11 in front of you?

12 THE WITNESS: Sure.

13 ATTORNEY VISHNY: Okay. I promise to be  
14 short.

15 THE WITNESS: You can take as much time as  
16 you'd like.

17 **EXAMINATION OF JOHN SCHIRA**

18 **BY ATTORNEY VISHNY:**

19 Q Now, all right. Miss Schneider was asking you some  
20 questions to show you that -- or I think, if I  
21 understood the point, that Paul Lee mentioned that  
22 the victim Joshua Richards had been shot from the  
23 left side so that Chong would have to be approaching  
24 that way, right?

25 A I believe so, yes.

1 Q Okay. So let's go back to where that is in the  
2 transcript. Looking at Page 42, starting with Line  
3 1869, right after Paul says, I heard the shot and I  
4 ran -- that's why I ran -- Q1 is you, right?

5 A I -- I don't know.

6 Q Yeah. This is the transcript at 12:41 a.m., and  
7 you're Q1?

8 A Okay.

9 Q And you say: Sure, and you don't see Chong, you  
10 don't see him. And Paul says: No, I don't see  
11 nobody. You say: But you think he's on this -- he's  
12 over on this side. This is while you're working with  
13 the diagram, right? That's what Miss Schneider asked  
14 you and you said you believed that's what was going  
15 on?

16 A Yeah.

17 Q Answer: He told me he came through the bar.

18 Question: All right. So that would have put  
19 him -- if I'm Josh, Chong is Chong, that would have  
20 put him on the right side.

21 Answer: Um-hum.

22 A You know, I'm glad you brought that up because  
23 actually I made a mistake there and if you keep  
24 going --

25 Q So you make a mistake, you suggest one thing, he

1 agrees with you, and then when you suggest the other  
2 thing, and then he agrees with you then, right?

3 A No. I think actually Chue corrected me because I was  
4 on the wrong side. If you go in, you can see that I  
5 acknowledge that I made a mistake.

6 ATTORNEY SCHNEIDER: What line was that  
7 that you started at if I can ask?

8 ATTORNEY VISHNY: I started at Line 1869.  
9 I'm planning to go to 1915 which is the next page.

10 Q (BY ATTORNEY VISHNY) So you're getting a little  
11 ahead of me there.

12 A Sorry.

13 Q So you said that would have put him right side. He  
14 says: Um-hum. And then Chue says: He should be  
15 on -- so he's facing you so he -- and then you say:  
16 Oh, I'm sorry. I'm (sic) right.

17 ATTORNEY SCHNEIDER: It's you're right, not  
18 I'm right.

19 Q You're right.

20 Okay. So then Chue says: So I come this way.  
21 And you say: So. And then Sergeant Thao says: I'm  
22 Chong. I'm coming this way. And you say: Yeah,  
23 right. So it's like --

24 Answer: He had already bum rushed me. I was  
25 like --

1                   Question: So he bum rushes you.

2                   And that's referring to Josh Richards there,  
3                   right?

4     A     Yes, ma'am.

5     Q     Okay. He says: Yeah. And then Sergeant Thao said:  
6                   And then Chong comes through there. And he says:  
7                   From the bars. And Chong -- I'm sorry. And you say:  
8                   And then Chong comes through there. And he says:  
9                   From the bars. And he says: Yeah, and I was right  
10                  like right at the wall. I was like over there.  
11                Okay, you say.

12                Answer: I was right over here like this.

13                Answer -- you say: Okay. Paul says: And the  
14                  next thing you know, boom, he falls and I say, oh, my  
15                  God. And you say: So he goes down. Okay. So it's  
16                  the left side which is important. And then he agrees  
17                  with you.

18     A     No. Actually, that's not how it happened.

19     Q     Well, I just read the transcript. Do you disagree  
20                  that this is what's on the piece of paper?

21     A     Because the video -- if you were to watch the video  
22                  it would show that I was facing the wrong way.  
23                  That's why I said it's important to be on the left  
24                  side.

25     Q     Right. So you told him it was important to be on the

1 left side, didn't you?

2 A That I made the mistake of being in the wrong  
3 direction, yes.

4 Q Okay. And so when you change your direction, he  
5 changes his direction, right?

6 A No, because I was -- when we're doing this we're all  
7 standing up and I'm having him demonstrate where he  
8 was standing, but because I'm not that smart I was  
9 facing the wrong way and Chue picked up on that and  
10 corrected me.

11 Q Now, Miss Schneider was also going through  
12 extensively questions that Paul had made these  
13 statements that Chong Lee had come and told him about  
14 the shooting, right? She went through a number of  
15 examples with you that I'm not going to belabor right  
16 now on redirect.

17 A For --

18 Q That Chong had come to his brother Paul and said I  
19 fucked up.

20 A Yes.

21 Q Basically confessing that he had shot the guy,  
22 right?

23 A Correct.

24 Q And so actually there was a change in those because  
25 the first time he's telling you all those things,

1 Paul is saying, well, that happened at my house on  
2 Monday, right? The first set of questions that  
3 refers to that, right?

4 A Yes, ma'am.

5 Q And then later he changes his story and says, well he  
6 went to Joe's, Joe knows about it, right?

7 A Correct.

8 Q And then later he changes his story again and says he  
9 came over to Joe's and Phong was there too and he  
10 told all three of us at the same time, right?

11 A That's not unusual.

12 Q Yeah. Some people might call that a growing story,  
13 correct?

14 A I've never heard that expression.

15 Q Okay. And eventually he wrote that statement out?

16 A He did that at the end, yes.

17 ATTORNEY VISHNY: Nothing further.

18 One minute. I think Mr. Weitz thinks I've  
19 forgotten something important.

20 Q (BY ATTORNEY VISHNY) And one other thing I forgot,  
21 very briefly, I'm not going to use any paperwork on  
22 this.

23 Joe Thor -- you went through with me and then  
24 later with the prosecutor about all these things Joe  
25 Thor said about how scared he was and it wasn't Paul,

1           it wasn't Paul, right?

2     A     Yes, ma'am.

3     Q     But notwithstanding what Joe Thor said, Paul Lee got  
4           arrested the next night, didn't he?

5     A     Not for the homicide.

6     Q     Well, the next night you're aware he was talked to at  
7           Norka, right, by Sergeant Rabas and Sergeant Thao?

8     A     I was aware that they talked to him but not  
9           specifics.

10    Q     Were you aware that at the end of talking to him and  
11           him vigorously denying doing this and after being  
12           told repeatedly he was looking at life that they  
13           slapped handcuffs on him and brought him down to the  
14           station in custody?

15    A     Slapped?

16    Q     Well that's my terminology. Put handcuffs on him.

17    A     I knew that he was taken into custody and transported  
18           to Appleton Police Department.

19    Q     Taking into custody, that means you're under arrest,  
20           right?

21    A     Yes.

22    Q     You're not free to go, right?

23    A     Yes, correct.

24    Q     So no matter what got said in that interview at  
25           Norka --

1 A I'm sorry.

2 Q -- he was placed under arrest and taken down to the  
3 Appleton Police Department, right?

4 A I don't know if he was under arrest or detained,  
5 quite honestly, I don't know specifics on that.

6 Q Let's use your word. He was detained, meaning he  
7 couldn't leave, correct?

8 A Correct.

9 Q And he couldn't leave after telling you at 12:41 a.m.  
10 that it was his brother Chong who said that he had  
11 F'd up, right? He couldn't leave then?

12 A No, correct.

13 Q He couldn't leave after the 2:19 a.m. conversation,  
14 right?

15 A The 2:19. Correct. Yes, ma'am.

16 Q And then there was the 11:58 a.m. conversation,  
17 right?

18 A Correct.

19 Q And only once you got his written statement from him  
20 and took the pictures and all the things you guys  
21 needed to do, then he was allowed to leave at 1:17  
22 p.m. and driven home.

23 A Actually I think at the beginning of the last  
24 interview that I did with him, I told him that he --  
25 he was going to be going home.



1 Q Right. But the time when he was allowed to go home  
2 was at 1:17.

3 A I believe so, ma'am.

4 ATTORNEY VISHNY: Thank you. Nothing  
5 further.

6 ATTORNEY SCHNEIDER: Just one follow-up.

7 **EXAMINATION OF JOHN SCHIRA**

8 **BY ATTORNEY SCHNEIDER:**

9 Q Do you have the 12:41 a.m. transcript in front of  
10 you?

11 A No, ma'am. She took them.

12 ATTORNEY VISHNY: No. It's right here. I  
13 had brought them here.

14 ATTORNEY SCHNEIDER: Okay.

15 Q Okay. I'm going to direct your attention, I have one  
16 question about that sequence that Attorney Vishny  
17 asked to you about where you're trying to stand and  
18 describe what happened.

19 A Yes.

20 Q Okay. So she went through on Page 42 into 43 where  
21 people were, what direction they were coming from,  
22 correct?

23 A Correct.

24 Q That sequence starts with Paul describing what on  
25 Page 1875?

1 A Saying --

2 ATTORNEY VISHNY: Line?

3 ATTORNEY SCHNEIDER: Line 1875, Page 42.

4 A Paul saying he told me he came through the bar.

5 Q Okay. And then you tried to figure out where  
6 everybody else was?

7 A Right. And what I was trying to explain is that I  
8 was simply -- I was facing the wrong direction when I  
9 -- when I was doing that with Paul.

10 Q Okay. But it started by Paul saying he told me he  
11 came through the bar?

12 A Yes.

13 ATTORNEY SCHNEIDER: Nothing further.

14 **EXAMINATION OF JOHN SCHIRA**

15 **BY ATTORNEY VISHNY:**

16 Q And regardless of whether or not somebody comes  
17 through the bar, whether or not the victim was shot  
18 in the right or the left would be de -- depend on the  
19 relationship to the victim and the shooter, right?

20 A Yes, ma'am.

21 Q So it doesn't really matter that he -- somebody came  
22 from the bar. If the victim was facing away from the  
23 bar and shot on the left face, the shooter would  
24 actually have to walk around to shoot him on the left  
25 side, right?

1     A     That's incorrect. The victim from our statements was  
2           actually facing north, facing towards the bar which  
3           would expose the left side of his head which Chong  
4           came from.

5     Q     Well, you had a number of different statements and  
6           different diagrams from people about where the victim  
7           was located, correct?

8     A     No. When speaking with Paul and Joe, and not so much  
9           Phong but those two, the directions were good, and  
10          especially Paul's as far as, you know, which  
11          direction they were facing.

12    Q     Well, as far as directions were good, you think  
13          they're good, but they could have made it up,  
14          right?

15    A     They may have.

16    Q     Yeah. Okay. So the guy could have been facing any  
17          way as far as you know scientifically because there  
18          is no video camera to show which way he was facing.

19    A     That's why you always try to corroborate and verify  
20          information.

21    Q     And if he was facing more towards the front door and  
22          Paul was over to his left more against the wall and  
23          Paul shot him, Paul would be facing his left side of  
24          his face, right?

25    A     Okay. Now you got me confused. This is what

1           happened last time.

2       Q     This is Exhibit 1, if I've got the right thing.  Yup.  
3           Okay.  So this is to scale, Exhibit 1 is this to  
4           scale drawing.  All right.

5                 So if Paul is here by this half wall with Phong  
6           and Joe behind him, he's facing in this direction,  
7           correct?

8       A     Paul?

9       Q     Yeah.  I'm asking you.  Paul.  If -- if Paul is in  
10          the area where I'm putting my finger, all right --

11      A     Um-hum.

12      Q     -- and Joe and Phong are to his right and left and a  
13          little behind him, and Paul is like holding his arms  
14          out kind of like protecting them almost after  
15          punching a guy, and he's doing that, then Paul could  
16          be facing in this direction, correct?

17      A     Paul could be, yes.

18      Q     Yeah.  And you see here where somebody put V for  
19          victim right here?  Do you see this on the map where  
20          it says Tou Shoua and then there is an X and the word  
21          -- and the letter V written next to it?

22      A     Ma'am, I don't know who put that there, and I don't  
23          know what that means.

24      Q     I'm asking you what you know, I'm asking what you see  
25          on this.

1 A From my information, that's not where the victim  
2 was.

3 Q Right. But I'm asking you if you're seeing  
4 something. Look, you're under sequestration, you  
5 don't know what other witnesses said in court,  
6 right?

7 A Right.

8 Q So I'm showing you this, and what I'm saying is if  
9 Paul is facing this way, meaning to the left of this  
10 diagram, and the victim is in front of him, correct?

11 A I see what you're saying, yes.

12 Q Yeah. And Paul could shoot him on the right or the  
13 left side or anybody could shoot him on the right or  
14 the left side from there?

15 A But that's contrary to the information that I know.

16 Q Well, I know it's contrary to what you know.

17 A So I'm not going to -- I'm not going to agree to that  
18 because that's contrary to what I know.

19 Q You can agree that whether somebody is shot in the  
20 right or left side doesn't matter what direction the  
21 bar is, it matters which way people are facing,  
22 right?

23 A Well it depends if the person is coming -- which we  
24 believe was coming from the bar then it is  
25 important.

1 Q We're not talking about your belief. All right?

2 A Okay.

3 Q What we're talking about isn't your belief. Look.

4 If you had a gun in your hand and you shot me right

5 now, it's fair to say you would shoot me on the right

6 side, right?

7 A Correct.

8 Q If you have a gun in your hand and you shoot me right

9 now, you would shoot me on the left side?

10 A But your argument is based off of where you're saying

11 the victim is.

12 Q Do me a favor and answer my question. Okay? I'm not

13 saying where the victim is. I wasn't there.

14 Witnesses are saying different things. Do you

15 understand that?

16 A Yes, ma'am.

17 Q You weren't there either, right?

18 A Correct.

19 Q Didn't see it happen?

20 A Correct.

21 Q No video?

22 A Correct.

23 Q So you're relying completely on the statements of

24 people like Paul, Joe and Phong, right?

25 A Yes, ma'am.

1 Q And you would agree if I'm facing this way you would  
2 shoot me on the left, right?

3 A Yes, ma'am.

4 ATTORNEY VISHNY: Nothing further.

5 THE COURT: Attorney Schneider?

6 ATTORNEY SCHNEIDER: No questions.

7 THE COURT: Members of the jury? Very  
8 good. Attorneys may approach.

9 (Bench conference.)

10 THE COURT: Okay. I have some questions  
11 for you.

12 Was Paul left by himself to write the statement  
13 that was highlighted on the overhead?

14 THE WITNESS: Chue Thao left. I was  
15 actually doing paperwork so I was in the room with  
16 him while he was doing that. I never spoke with him,  
17 never talked to him. That's on video.

18 THE COURT: All right. How long were the  
19 interviews with Paul that you felt it necessary to  
20 give a summary of what was covered?

21 THE WITNESS: There were two interviews  
22 with Paul. The first I believe was an hour and  
23 fifteen minutes long, the second one was an hour and  
24 five minutes long, but the -- there was a big break  
25 between them. I want to say eight hours between

1           those interviews.

2                   THE COURT: Is it common practice of yours  
3           to do this with a witness?

4                   THE WITNESS: I do this every time.

5                   THE COURT: In your firearm experience, how  
6           does a semi-auto discharge a spent round and fly  
7           away?

8                   THE WITNESS: What happens is the -- it's a  
9           gas operating system. When a round goes off, that  
10          gas operates the slide. The slide slides back, there  
11          is a thing called an ejector or an extractor, and  
12          what that does is grabs a casing, pulls that casing  
13          out, expends that casing out the side of the gun, and  
14          then as the slide comes back the spring picks it up  
15          and it picks up another round and feeds it into the  
16          chamber. So that's why they call it a semi-automatic  
17          gas report operating system.

18                  THE COURT: Is there any other cameras on  
19          College Avenue and the corner by Luna outside or  
20          around Sharks?

21                  THE WITNESS: I believe there are but  
22          that's not my area of expertise. That would be  
23          Sergeant Rabas who really looked at all the camera  
24          systems.

25                  THE COURT: Did Joe Thor at any time say



1 Paul Lee was the shooter, not he could have or maybe,  
2 but was the shooter?

3 THE WITNESS: Did Joe Thor ever say that  
4 Paul Lee was the shooter?

5 THE COURT: I can read the question again.

6 THE WITNESS: Please.

7 THE COURT: Did Joe Thor at any time say  
8 Paul Lee was the shooter, not he could have or maybe,  
9 but was the shooter?

10 THE WITNESS: No. It was the exact  
11 opposite. He was adamant that he wasn't the shooter.

12 THE COURT: Were any firearms, bullets or  
13 accessories found when searching Chong's residence?

14 THE WITNESS: I don't believe so, no.

15 THE COURT: Does that prompt any additional  
16 questions, Attorney Schneider?

17 ATTORNEY SCHNEIDER: Just one question, and  
18 I might lead a little bit. I think I know the  
19 intent.

20 **EXAMINATION OF JOHN SCHIRA**

21 **BY ATTORNEY SCHNEIDER:**

22 Q When a semi-automatic, a bullet is fired, the actual  
23 projectile we call the bullet, right?

24 A Yes.

25 Q And then the casing remains and that's ejected from

1 the firearm in some fashion, correct?

2 A Correct.

3 Q Is there any way to tell all of a certain make eject  
4 to the right, to the left, forward or back?

5 A The majority of firearms are designed for  
6 right-handed shooters meaning that the ejection port  
7 is on the right side so it throws the round to the  
8 right, but there are some exceptions.

9 Q Okay. And we don't know whether they go forward or  
10 back when they're ejected?

11 A Again, really based off the manufacturer. Some of  
12 them are designed to do a 45-degree angle, some are  
13 90-degree angle, but the majority of them are in  
14 between that.

15 Q And the area -- if you go back to yesterday with me,  
16 the area where this occurred, the foyer area, I  
17 talked about a mass exodus of people. Do you  
18 remember that?

19 A I do.

20 Q So at the point after the shooting, there is a bunch  
21 of people who go walking or running through that  
22 foyer area.

23 A Correct.

24 ATTORNEY SCHNEIDER: Nothing further for  
25 follow-up.

1 THE COURT: Attorney Vishny?

2 ATTORNEY VISHNY: No questions.

3 THE COURT: All right. Thank you, sir.

4 And let me ask this, members of the jury, and I

5 -- I defer to you on this, are you okay with a

6 45-minute lunch or would you prefer an hour lunch?

7 And I'm fine either way. Is anyone strongly opposed

8 to a 45-minute lunch?

9 (No response.)

10 THE COURT: Okay. Very good. So what I

11 will do is I'll ask that everyone be back here at

12 about 1:40. Okay? Thank you.

13 Please rise for the jury.

14 (The jury was escorted out of the

15 courtroom.)

16 THE COURT: There were -- and the gallery,

17 you're free to be seated or leave or whatever you

18 would like to do, we just have a few housekeeping

19 items.

20 There were two sidebars during this session, one

21 related to Chong Lee never being asked about a

22 statement. That was clarified in a subsequent

23 question, it was moved on.

24 There was a second objection related to some of

25 the questioning of Sergeant Schira on redirect about

1           going into some of the witness statements. I  
2           overruled the objection with the further  
3           understanding that not a great amount of time be  
4           spent on those subjects. The court -- or the State  
5           did comply with that request.

6           That's a summary of the two sidebars as I best  
7           recall.

8           ATTORNEY VISHNY: Yes.

9           ATTORNEY SCHNEIDER: Yes, Judge.

10          THE COURT: The easier -- so then we have  
11          two other issues. One relates to Sergeant Thao and  
12          Sergeant Rabas being present during their respective  
13          testimonies. What I'm going to do is indicate that  
14          when there is a subject matter where they were both  
15          involved that the other be excluded from that, and,  
16          likewise, I don't know who's questioning on defense,  
17          if, Attorney Vishny, if you just let me know when  
18          you're getting into that subject matter, I'll ask  
19          the --

20          ATTORNEY SCHNEIDER: But let me ask this.  
21          Let's say it's Sergeant Rabas's interview but  
22          Sergeant Thao wasn't there. Can we have it so  
23          Sergeant Thao remains in the room for that part and  
24          Sergeant Rabas leave? That's what I would like to  
25          do.

1                   ATTORNEY VISHNY: Say it again once. I  
2           don't think I understand.

3                   ATTORNEY SCHNEIDER: So who's testifying?

4                   ATTORNEY VISHNY: Trainum.

5                   ATTORNEY SCHNEIDER: Oh.

6                   THE COURT: I didn't get to that part  
7           yet.

8                   ATTORNEY SCHNEIDER: He's just talking  
9           about --

10                  ATTORNEY VISHNY: I thought that's what we  
11           were talking about.

12                  ATTORNEY SCHNEIDER: Their being in for  
13           each other.

14                  THE COURT: There was a request that one be  
15           out during the other.

16                  ATTORNEY SCHNEIDER: So it really would be  
17           the Paul Lee interview at Norka is the interview they  
18           overlapped on.

19                  ATTORNEY VISHNY: Right. But what I'm  
20           asking is that when James Trainum testifies, and he  
21           is the next witness out of order, that because he is  
22           out of order, I am requesting that when he testifies  
23           regarding interrogations done by Sergeant Rabas, he  
24           be out of the room, and that when he does them about  
25           Sergeant Thao, that Sergeant Thao be out of the room.

1           However, there will be one where they were both in  
2           and that I -- my request was that they both not be in  
3           the room at that time and that Miss Schneider have a  
4           different court officer assist her if she needs one  
5           during that particular time.

6                       THE COURT:   How -- how -- the earlier part  
7           I'm not as concerned about as a practical matter.  I  
8           think it would be very difficult to get a different  
9           court officer, that's my concern.

10                      ATTORNEY SCHNEIDER:  It would be in terms  
11           of how we prepped and what we've done, it would be.  
12           And -- and I understand they're going out of order,  
13           but had they finished and then he testifies, they  
14           would be in the courtroom, and then I could call them  
15           for rebuttal if I needed to.  So I might end up  
16           moving what would have been questions in rebuttal in  
17           my direct, but she still gets to cross them on that.  
18           So I'm going to ask that they be allowed to stay.

19                      THE COURT:  How much time is -- how much  
20           time is going to be when they're both involved?

21                      ATTORNEY VISHNY:  There is only one  
22           interview where they're both involved, and that's the  
23           Norka interview by Sergeants Rabas and, you know, I  
24           don't know how long it's going to -- I don't know how  
25           long it's going to take.  I have to look at my notes

1 to see how many questions I have about that. Let me  
2 just see like compared to how many pages I have.

3 THE COURT: Okay.

4 ATTORNEY SCHNEIDER: And even that  
5 interview, they weren't both there the full hour and  
6 fifteen minutes because Sergeant Thao was talking to  
7 Michael Xiong, so I think it's about half an hour,  
8 the last half hour they were there together.

9 ATTORNEY VISHNY: Well then I would ask  
10 that Sergeant Thao be able to be permitted in the  
11 courtroom then and Sergeant Rabas be the one who  
12 steps out if Miss Schneider has one court officer.  
13 Let me just say that that particular part of my  
14 direct is not that long. It takes up about a third  
15 to a half of a page.

16 THE COURT: This isn't the one -- didn't  
17 you say you have a 22 page?

18 ATTORNEY VISHNY: That was something else.  
19 I have a seven-page direct because we -- my pages are  
20 less because the witness is doing more of the  
21 talking.

22 THE COURT: Right.

23 ATTORNEY VISHNY: Not me.

24 ATTORNEY SCHNEIDER: So --

25 THE COURT: What I'll do is when -- when

1           they're both there, Sergeant Thao may be present, and  
2           then when it's individual, I'd ask that --

3                   ATTORNEY SCHNEIDER: You want them to go in  
4           and out?

5                   THE COURT: That's what we're doing when --  
6           no, we're not.

7                   ATTORNEY SCHNEIDER: No. Well, when  
8           Sergeant Rabas is talking and we start talking about  
9           Appleton Norka --

10                   THE COURT: Let me ask this. I mean, the  
11           -- Attorney Vishny, I dealt with it as a practical  
12           matter, if -- if we had had the ability to have Mr.  
13           Trainum in order, Sergeant Rabas would have already  
14           testified.

15                   ATTORNEY VISHNY: That's right. But then I  
16           would have cross-examined Sergeant Rabas already  
17           about his interrogation techniques, and I haven't had  
18           the opportunity to do that, and it's that  
19           cross-examination that I'm going to do that I -- the  
20           points I would bring out are what are going to be  
21           testified here, you know.

22                   THE COURT: That's fair enough.

23                   ATTORNEY SCHNEIDER: And all I would do is  
24           call him in rebuttal if I needed to clarify something  
25           if I thought their interrogation techniques -- to me



1 I don't think it's any different than having them  
2 in.

3 THE COURT: I'm going to grant the request  
4 in part. When it's questioned about Sergeant Rabas,  
5 Sergeant Rabas should be out. When it's Sergeant  
6 Thao, Sergeant Thao should be out. But when it's  
7 both, Sergeant Thao can remain so that you always  
8 have a court officer.

9 ATTORNEY SCHNEIDER: Okay. I think I  
10 understand. We only have 45 minutes for lunch.

11 (Lunch recess.)

12 (The jury was escorted into the courtroom.)

13 THE COURT: Please be seated.

14 And my understanding, ladies and gentlemen, just  
15 to briefly explain to you, our next witness is  
16 actually a witness that will be or is being called by  
17 the defense. Because of his unavailability, the  
18 parties have agreed that he may go out of order. So  
19 just so that you understand when Attorney Vishny is  
20 asking questions first, that's the explanation.

21 So, Attorney Vishny.

22 ATTORNEY VISHNY: Thanks. I call James  
23 Trainum.

24 THE CLERK: Please raise your right hand.

25 (Oath administered to witness.)

1 THE WITNESS: I do.

2 THE CLERK: Please state your full name and  
3 spell it for the record please.

4 THE WITNESS: James L. Trainum, spelled  
5 T-R-A-I-N-U-M.

6 THE COURT: Okay. And you may be seated,  
7 sir. And then the only thing I would ask before  
8 turning it over to counsel is if you could adjust the  
9 microphone so that -- the acoustics in here aren't  
10 fantastic, so if you could adjust the microphone,  
11 that would be appreciated.

12 THE WITNESS: Testing.

13 THE COURT: Okay. Attorney Vishny.

14 ATTORNEY VISHNY: Thank you.

15 **EXAMINATION OF JAMES L. TRAINUM**

16 **BY ATTORNEY VISHNY:**

17 Q I think you stated your name.

18 Can you tell the jurors what your occupation is?

19 A I'm currently a retired D.C. police officer. I work  
20 as a combination consultant, teacher and writer.

21 Q I'm going to ask you some questions about your  
22 qualifications, but before I do that, I'm showing you  
23 what's been marked as Exhibit No. 190.

24 A Yes.

25 Q Can you please tell the jurors what that is?

1 A This is a copy of my resume.

2 Q Okay.

3 ATTORNEY VISHNY: Thank you. I'd move  
4 Exhibit 190 into evidence.

5 ATTORNEY SCHNEIDER: No objection.

6 THE COURT: Exhibit 190 will be received.

7 Q (BY ATTORNEY VISHNY) Can you tell the jurors about  
8 your particular experience with -- as a metropolitan  
9 police department officer in Washington D.C.

10 A I was hired by the D.C. Police Department back in  
11 1983, and I did the normal thing like every other  
12 officer did, I worked routine patrol. I then went  
13 with an investigative group called repeat offender  
14 project in '86. Soon after that I ended up in  
15 homicide. That was in 1993. And I spent the rest of  
16 my career there until I retired in March of 2010.

17 The last several years I was assigned to  
18 homicide, I was in the major -- what they call the  
19 major cold case unit, and as part of my  
20 responsibilities there, I created a program, or we  
21 were using college interns to do a systematic review  
22 of all homicide cases going back into the early  
23 1960s. What we were doing was not only looking for  
24 cold cases that had gone unsolved and trying to see  
25 whether or not we could resuscitate any of them, but

1 we were looking for issues with investigations in  
2 general that we could identify in order to help  
3 assist with the future investigations.

4 Q Now I'm going to ask you specifically about your  
5 experience in criminal interrogation as it refers to  
6 homicide interrogations. About how many homicide  
7 interrogations do you believe you've done?

8 A Well, probably under 50, I would say.

9 Q Okay. And what about criminal interrogations  
10 altogether?

11 A Interrogations altogether, well more than that,  
12 probably over a hundred. You just don't interrogate  
13 that many suspects. You have a tendency to deal more  
14 with uncooperative witnesses and you deal with  
15 probably several hundred of those.

16 Q Okay. So it would be -- so the lower number you're  
17 giving me, as I understand it, is suspects, the  
18 higher number is uncooperative witnesses?

19 A That's correct.

20 Q And did you receive any training on interrogation  
21 while you were a law enforcement officer?

22 A Yes, I did.

23 Q Can you tell the jury what that is?

24 A I received training through the FBI Academy on  
25 interview and interrogations, I attended the basic

1           and advanced Reid interrogation courses. I received  
2           a couple of in-service trainings through my own  
3           department on interview and interrogation, and I  
4           attended various seminars, homicide conferences,  
5           things like that where they taught maybe half a day  
6           to full day segments on interview and interrogation  
7           tactics.

8       Q     When you say Reid, first of all, that's spelled  
9           R-E-I-D?

10      A     That's correct.

11      Q     When you say Reid interrogation, I don't think the  
12           jurors really are familiar with that. Can you  
13           explain to them what that means?

14      A     I apologize. Sometimes fall into slang and I need to  
15           explain further. The Reid Institute is the largest  
16           and oldest interrogation school here in the US, and  
17           they teach a process that is known as the Reid  
18           technique when it comes to interview and  
19           interrogation. It's a nine-step process, as they  
20           call it, and basically, in my studies and research, I  
21           have found that just about every single -- because it  
22           is the oldest, it's been taught probably more than  
23           any other technique out there, but all the other --  
24           just about all the other interrogation schools here  
25           in the country teach a version of what the Reid

1 technique is.

2 Q Now, I will come back to talk about the Reid  
3 technique later, but I'll return more to your  
4 qualifications. Have you caught -- taught any  
5 courses regarding interviewing, interrogation or  
6 matters related to law enforcement?

7 A Yes. While I was active with the D.C. Police  
8 Department, I taught at the D.C. Police Academy. I  
9 also taught at the Richmond hom -- Richmond, Virginia  
10 Homicide School. I taught classes at the US  
11 Attorney's office in D.C., mostly about  
12 investigations and issues with statement evidence,  
13 how to avoid things like problematic tactics and  
14 statement evidence contamination.

15 Q Have you specifically taught mostly on evaluating  
16 confession evidence?

17 A That's pretty much it, yes.

18 Q And statement evidence?

19 A Yes. Well pretty much it's the same thing. You kind  
20 of evaluate both in the same manner.

21 Q Have you taught this for both -- let me ask this.  
22 The audiences that you've spoken to, what is the  
23 variety of audiences that you've spoken to when  
24 you've taught about interviewing, interrogation and  
25 taking statements?

1     A     When I was working for the D.C. Police Department it  
2           was probably half and half. I taught some classes  
3           for the public defender service. Like I said, I've  
4           taught some prosecutor classes and homicide school  
5           classes and basic investigator classes. Since then I  
6           still continue teaching, it's -- most of it is for  
7           defense attorneys, students with The Innocence  
8           Project, things along that line, but I do have  
9           programs that I taught down for supervisors, judges  
10          and prosecutors in Texas, I've taught the Boston  
11          prosecutor's office, the north homicide unit, the  
12          Nevada Chiefs and Sheriff Association, I lectured  
13          there. That's just a few of the ones that I've  
14          taught for.

15     Q     Okay. In addition to your teaching, do you serve on  
16           any committees, advisory boards or professional  
17           organizations?

18     A     Yes, I do.

19     Q     And what would that be?

20     A     I'm a board member for the Mid Atlantic Cold Case  
21           Homicide Investigators Association. I'm a member of  
22           the Vidocq Society, which is a society of  
23           investigators from around the country that meet to  
24           consult on cold cases on a voluntary basis. The  
25           International Association of Homicide Investigators,

1 the International Investigative -- International  
2 Investigative Interviewers Research Group. That's  
3 kind of a mouthful right there. I do volunteer work  
4 doing case reviews for the National Center for  
5 Missing and Exploited Children and also for the  
6 Parents of Murdered Children.

7 Q So is it fair to say that when you do your teaching,  
8 you will teach for anybody who will bring you, it  
9 doesn't matter if they're law enforcement,  
10 prosecutors, defenses lawyers, judges?

11 A That's correct.

12 Q Have you conducted any research or published anything  
13 regarding specifically in the area of interviewing,  
14 interrogation and police and witness and suspect  
15 interviewing?

16 A Yes. I'm the co-author of a chapter in this book  
17 called Criminal Investigative Failures, and it's  
18 basically a textbook for law enforcement and  
19 attorneys on the issues that can lead to things like  
20 unsolved cases, wrongful convictions, wrongful  
21 arrest, and how to avoid them. I'm the author of an  
22 article that was published in the International -- in  
23 the International Association of Chiefs of Police  
24 magazine, *Police Chief*. It's basically for  
25 supervisors on how to evaluate confession evidence



1           and how to avoid contamination of confession  
2           evidence. And I have a book pending right now that  
3           is out in July on police interrogation techniques and  
4           how they can lead to false confessions, bad statement  
5           evidence and how to avoid those issues.

6       Q     Have you testified previously in court?

7       A     Yes, I have.

8       Q     And approximately how many times have you been on a  
9           witness stand in your life?

10      A     Probably several hundred in general.

11      Q     Have you testified -- now I'm assuming you testified  
12           as a police officer?

13      A     That's a majority of it, that's correct.

14      Q     Okay. Have you also testified as -- once you were in  
15           your consulting practice?

16      A     Yes, I have.

17      Q     And would that be in both court and depositions?

18      A     Yes.

19      Q     Did you conduct a review of the homicide of Joshua  
20           Richards?

21      A     Yes, I did.

22      Q     Did you review the police investigation?

23      A     I did.

24      Q     Can you tell the jurors what you reviewed in  
25           connection with that?

1 A It was a lot of material. Basically all the police  
2 reports, whatever video was out there, surveillance  
3 videos, still pictures, autopsy report, the witness  
4 statements transcripts, videos and audio transcripts,  
5 and also there were some charts of search warrants  
6 that were issued and things along that line.

7 Q Did you also review Mr. Chong Lee's statement?

8 A Yes, I did.

9 Q Did you review the statements of Phong Lee, Joe Thor,  
10 Paul Lee and Tou Shoua Lee?

11 A Yes, ma'am.

12 Q And that was just part of what you reviewed, you  
13 reviewed other people's statements as well?

14 A That's correct.

15 Q You reviewed Alyson Blom?

16 A Yes.

17 Q All right. Have you also had an opportunity to  
18 review transcripts of phone calls in which Chong Lee  
19 is a person on the telephone calls?

20 A Yes, I have.

21 Q Have you also reviewed letters that Chong Lee has  
22 written that were found in his jail cell?

23 A Yes, I did.

24 Q Or in other people's homes?

25 A Yes.

1 Q All right. Let me ask you, Mr. Trainum, what is the  
2 difference between an interview, a police interview  
3 and an interrogation?

4 A In the US we basically differentiate the two. An  
5 interview is a -- where you collect information from  
6 like a witness or whatever. It's not accusatory.  
7 You basically ask them open-ended questions and try  
8 to extract as much information from them as possible.  
9 An interrogation is accusatory. You basically have  
10 decided that that person is either guilty or has  
11 information that they're withholding, and it becomes  
12 more of a monologue. It's not open-ended questions,  
13 you kind of -- it's more of a structured  
14 conversation. With an interview, the person who is  
15 being interviewed does most of the talking. In an  
16 interrogation, it's typically the detective who is  
17 doing 90 percent of the talking.

18 Q How important is interviewing and interrogation in  
19 police investigation work?

20 A Well, when you look at -- there is an old adage about  
21 three things that it takes to solve crimes,  
22 witnesses, confessions and evidence. Two of the  
23 three involve talking to people and being able to get  
24 information from them. And you need to do it in such  
25 a way that that information is admissible, it's

1           reliable and it's accurate. It's pretty much the  
2           most important thing that we do, because as  
3           detectives we do it just about every single day if  
4           not multiple times a day.

5       Q     Now, what -- before I get to asking about accuracy  
6           and reliability, what is the difference between what  
7           you call interviewing and interrogation or  
8           witness-based evidence? Do you mean the same thing  
9           as physical evidence?

10      A     Physical evidence such as DNA, shell casings, phone  
11           records, computer records, things along that -- that  
12           line. It's a very general categorization. Sometimes  
13           they might bleed over back and forth, but witnesses,  
14           it's things that people see, things that people hear,  
15           and of course suspects, you consider them to be the  
16           people who committed the crime.

17      Q     You were talking earlier about accuracy and  
18           reliability. Is there a difference between those two  
19           words when it comes to police investigations?

20      A     Well, yes.

21      Q     And witness -- I'm sorry. And witness statements?

22      A     It's -- it's all in the information that you get and  
23           how you recover that information. Statement evidence  
24           and confessions -- and I should just use the word  
25           statement evidence because it covers everything. You

1           recover it pretty much the same way. You have to be  
2           careful in how you recover it. It's like physical  
3           evidence in that it can be contaminated so that it  
4           becomes unreliable. It might be accurate but it  
5           won't be reliable. If I talk about physical  
6           evidence, as an example, let's say that I recover --  
7           in a standing case I recover the victim's bloody  
8           clothing and I recover clothing from the suspect and  
9           the lab comes back saying that, lo and behold, the  
10          victim's DNA is on the suspect's clothing. Well,  
11          that's an accurate piece of evidence because the lab  
12          says that it was there, but is it reliable in  
13          reference to this case. When you go back and examine  
14          how the evidence was recovered, you find out that I  
15          as a lab technician, I recovered the bloody clothing  
16          with the same pair of gloves that I recovered the  
17          victim's clothing, the suspect's clothing, so  
18          therefore I've cross contaminated it and it makes --  
19          it brings the blood that's on the suspect's clothing  
20          into question. The same thing can happen with  
21          statement evidence. If you ask the wrong questions,  
22          if you -- if you retrieve it the wrong way, you can  
23          actually contaminate it and modify it and make it  
24          unreliable. It might still be accurate, but you just  
25          couldn't show that it's accurate because of the way

1           that it was recovered.

2       Q     Now, when we apply these concepts of accuracy and  
3           reliability, I'm going to talk about -- I'm going to  
4           get into that, but let me just first ask, do you  
5           think I've adequately asked you or is there anything  
6           you want to add to how law enforcement is trained to  
7           do interviews and interrogations?

8       A     Well, I basically was talking about the Reid  
9           technique, and the point that I was bringing up is  
10          that when law enforcement -- just about every single  
11          law enforcement sponsored training that I received  
12          out there is either the Reid technique or a variation  
13          of the Reid technique, and so when researchers study  
14          interrogation tactics and how interrogations are  
15          done, they basically -- the number one school they  
16          refer to is the Reid School.

17      Q     And have you personally reviewed not just Reid  
18           interrogation but the other leading training methods  
19           in the United States? I think you said that before.  
20           I don't want to be repetitive.

21      A     I've been -- I've been to some. I also reviewed  
22           their textbooks, their other literature. They have a  
23           lot of online websites, online training. I went  
24           through a ton of it. I also have attended schools  
25           internationally as well. There is a system over in

1 the UK called investigative interviewing or PEACE,  
2 PEACE is an acronym for the different steps, and I've  
3 taken classes in that, and also I've reviewed the  
4 training material from other countries as well.

5 Q Okay. We'll talk about that a little bit later.  
6 What I want to say is can you explain to the jurors  
7 kind of how a typical police interrogation  
8 develops?

9 A Sure. Basically -- and these aren't the full nine  
10 steps. Like I said, I'm just going to give you a  
11 general idea of how an interrogation is supposed to  
12 go.

13 I've already determined as a detective that  
14 you're either withholding information from me or that  
15 I strongly feel that you're guilty. I am supposed to  
16 confidently accuse you of the crime. I'm supposed to  
17 say our investigation -- or something along this  
18 line, our investigation has shown that the evidence  
19 has proven that you've committed this crime. I don't  
20 want to hear anything else except why you did it. I  
21 want to understand why you did it. At that point I'm  
22 going to start offering you what they call themes,  
23 different schools call them different things, but a  
24 theme is supposed to be a psychological or a moral  
25 justification as to why you did the crime.

1 Q Now, can you explain what a theme -- a typical theme  
2 would be, give an example of this psychological or  
3 moral justification?

4 A Sure. Such as, let's say I'm investigating money  
5 that was stolen out of a cash register. A typical  
6 theme might be that the business left it out and you  
7 were tempted, like anybody would be tempted, and that  
8 you're sorry for what you did, you feel remorse, that  
9 sort of thing, and you were going to pay it back  
10 anyway. Those sorts of themes. Like that. Or like  
11 an assault case, you just lost control because  
12 somebody called you a racial epithet or something  
13 along that line. That would be a moral or  
14 psychological justification that you would be allowed  
15 to use. If you don't bite on one theme, then I throw  
16 out another theme or another theme until I find one  
17 that you find acceptable that you're going to agree,  
18 yes, you know, that's -- that's the reason I did it  
19 and so I'm going to confess and tell you why I did  
20 it. If you try to deny, if you try to explain, if  
21 you try to do anything else other than say I did it,  
22 I'm supposed to block you. So that's the difference  
23 between an interview and interrogation. With an  
24 interview I'm getting information, with an  
25 interrogation I'm trying to move you towards a final



1 goal of telling me what I think you should be able to  
2 tell me. So I'm blocking your denials, another  
3 theme, another theme, blocking your denials, another  
4 theme.

5 At some point I'm going to give you what we call  
6 the alternative question. Now, the alternative  
7 question is going to be, listen, all the evidence  
8 shows that you did it. Like I said, you cannot  
9 convince me that you didn't. So either you did it  
10 because of a really, really bad reason or a not so  
11 bad reason. It's one of the two, which one is it.  
12 And typically a lot of times I'll put in a time  
13 constraint to increase the pressure. The time  
14 constraint will be, look, you either did it because  
15 you're a really, really bad person. If that's the  
16 case, I don't want anymore to do with you, I'm out of  
17 here. But if you did it because you're not so bad a  
18 person, then people will understand and, you know,  
19 we'll go from there. At that point, if you bite and  
20 you accept the lesser of the two themes, of course,  
21 that's the admission. After I get the admission,  
22 that's not the confession, I'm then supposed to go in  
23 and obtain those details about the crime that only  
24 you would know, that only the person who was -- we  
25 call them holdback details. That's information that

1 I supposedly know about the crime that only the real  
2 suspect or witness who was there would know. Now,  
3 I'm supposed to be able to get those from you and  
4 then that's when I have the confession.

5 Q All right. You have been talking about this now in  
6 terms of confessions. Are these same techniques used  
7 of interrogation as to witness statements as opposed  
8 to just the alleged perpetrator?

9 A Yes. Pretty much the same thing. They teach if the  
10 witness is not being -- that you have determined that  
11 the witness is not being cooperative, then you go  
12 into interrogation mode and you use basically the  
13 same tactics against the witness as you would a  
14 suspect in order to get them to admit to what you  
15 think is the truth and what you think they should be  
16 able to tell you.

17 Q Now, is there agreement among those who teach  
18 interrogation or train in this area that there are  
19 certain themes or techniques which are problematic?

20 A Yes.

21 Q What is -- is the feeling or what -- what in the  
22 field do people feel are problematic interrogation  
23 techniques?

24 A Well there's a large body of research that thinks  
25 that the entire approach that Reid has is

1           problematic. But that's for another topic. There is  
2           agreement Reid and other interrogation schools, but  
3           primarily Reid, has come to an agreement with the  
4           interrogation and research experts as to problematic  
5           tactics that should be avoided or not used at all.  
6           One is any kind of real or imagined threat of any  
7           kind of inevitable consequence. I'm sorry, kind of a  
8           mouthful for me right there. You're not suppose --  
9           you should not be saying that the evidence proves  
10          that you were guilty, you will be found guilty no  
11          matter what you say, you're going to go to jail for  
12          life, the jury is going to convict you on this stuff.  
13          That is not appropriate according to what the  
14          interrogation schools and the researchers say. In  
15          conjunction with that, any implied -- real or implied  
16          promise of leniency is -- should not be used as well.  
17          I talk about a moral or psychological justification.  
18          An improper one would be if you tell me what I think  
19          is the truth, what I need to hear, then these bad  
20          things won't happen, you know, the DA won't charge  
21          you, you won't go to jail, I'll get you help, I'll  
22          make sure that this goes away, you know, that sort of  
23          thing. So those two things combined is oftentimes  
24          what causes people to give statements that they think  
25          -- what ends up happening is that we create the

1 temporary perception that it's to your benefit to  
2 tell the detective what they think is the truth in  
3 order to escape that inevitable consequence and  
4 receive that benefit.

5 Q Now, I'm going to show you what's been marked as  
6 Exhibit No. --

7 A I'm sorry. I have one more issue that I was going to  
8 bring up.

9 Q Sure.

10 A What they call false evidence ploys, lying about  
11 evidence. The Reid technique or Reid people and  
12 other interrogation schools recognize that the courts  
13 allow detectives to do this, and so there -- because  
14 even if you lie about evidence up to a point, it's  
15 still admissible. However, Reid recommends that you  
16 avoid it for two reasons. One is if you're lying  
17 about evidence and you get caught, you lose your  
18 credibility. In one case, I remember personally, I  
19 had a suspect who we thought killed our victim with a  
20 .38 caliber weapon. We locked him up on another  
21 warrant, he had the .38 caliber weapon there with  
22 him, or a .38 caliber weapon. We -- I'm  
23 interrogating him and we're going on and on, I've  
24 spent time with him in the interrogation room. I got  
25 an informant saying, yeah, you got him with the right

1           weapon, so I decided I would bluff. I walked in and  
2           I told him, hey, the lab just came back, that was the  
3           same weapon that killed the victim over here. And he  
4           just totally turned around. He totally shut down  
5           because it turned out it wasn't the right weapon.  
6           So, like I said, when you -- when you bluff you run  
7           that risk of saying the wrong thing and you lose  
8           credibility.

9           More importantly, lying about evidence is one of  
10          the things that can contribute to false statements  
11          and false confessions. Now, Reid will teach that  
12          simply saying -- just simply presenting a false  
13          evidence ploy to somebody would not induce them to  
14          falsely confess. And I totally agree. However, they  
15          say, and the experts agree, that if you introduce the  
16          false evidence ploy in conjunction with the real or  
17          implied threats or the real or implied promises, then  
18          that could potentially increase the possibility of  
19          falsely confessing or getting -- giving a false  
20          statement, especially in a case of younger people,  
21          juveniles, and people with let's say diminished  
22          social maturity right there.

23        Q     Mr. Trainum, specifically in the Reid book, I'm just  
24               going to show you what's been marked as Exhibit 178,  
25               just a couple of examples here. What is Exhibit 178?

1 Can you explain what that is?

2 A Sure. This is the workbook that is handed out at the  
3 Reid training classes to law enforcement.

4 Q All right. Turning your attention to Page 48, in  
5 discussing interrogation themes, is there something  
6 that the Reid people advise as far as telling  
7 suspects, witnesses, something about the punishment  
8 for their crime? Is that a problem?

9 A They say it is psychologically wrong for the  
10 interrogator to remind the suspect of the punishment  
11 for his crime. We cannot expect a person to tell the  
12 truth without giving him the opportunity to couple  
13 his admission with an excuse that allows him to save  
14 self-respect.

15 Q And turning to page, I think it's 73. Let me find  
16 it. Numbers are kind of cut off on the bottom so --  
17 do the trainers then in the workbook advise some  
18 things that should not be put in what they call the  
19 alternative question or questions to a person that's  
20 being interrogated?

21 A Sure. They should not threaten consequences or offer  
22 promises of leniency. An example is, inappropriate  
23 ones, do you want to cooperate with me and tell me  
24 what happened or spend the next five to seven years  
25 behind bars. Do you want to be cleared with

1 first-degree murder charges -- I mean, sorry, do you  
2 want to be charged with first-degree murder charges  
3 which will mean life in prison or want this just to  
4 be manslaughter.

5 Q Now, what is the problem with using those kinds of  
6 questions when you're questioning a witness and  
7 trying to get information from a witness?

8 A What you're doing is you're trying to get them to  
9 admit to what you have already perceived as the truth  
10 and you're boxing them in, you're not listening to  
11 what they may have to offer, and you're creating the  
12 atmosphere, like I had mentioned before, where they  
13 perceive temporarily at least that in order to escape  
14 first-degree murder charges and receive the benefit  
15 of manslaughter that they're going to have to tell  
16 you what you want to hear.

17 Q Now, regarding written reports that are -- I'm sorry,  
18 written statements, excuse me, is there any advice in  
19 this workbook about what an investigator should do  
20 when having somebody write out a written statement?

21 A It basically says you don't dictate what the suspect  
22 should write and you don't spell words for the  
23 suspect.

24 Q What does that mean, don't dictate? You've been  
25 through this training, you --

1     A     You just don't tell them what to include in the  
2           written statement. The written statement is theirs,  
3           and you basically, you know, say, okay, you've  
4           already -- back before we recorded videos we took  
5           more written statements and you would just pretty  
6           much say, okay, you've explained it to me, now please  
7           just put it down here in your own words, and I would  
8           typically leave the room and let them do that and  
9           then come back.

10    Q     Okay. Now, in that particular part of the workbook,  
11           we -- the questions I asked you or the comments in  
12           the workbook were about very specific threats of this  
13           is how much time a person could get in jail when  
14           posing a question.

15    A     That's correct.

16    Q     I'm going to show you --

17                     ATTORNEY VISHNY: This is 194.

18    Q     (BY ATTORNEY VISHNY) I'm showing you what's been  
19           marked as Exhibit No. 194. Is that an appendix to  
20           the same book that we were just looking at?

21    A     Yes, it is.

22    Q     All right. And what does that appendix have to say  
23           regarding even implied promises of leniency?

24    A     Well, the appendix is entitled Maintaining the  
25           Integrity of the Confession, and it says that our



1 position, as will be set forth in this article, is  
2 even -- is that even implying a threat or promise of  
3 leniency should be considered impermissible as an  
4 interrogation technique. The discussion will also  
5 address the use of trickery or deceit.

6 Q And -- all right. Let me go take my seat before I  
7 ask you the next question.

8 Don't police need to use these techniques,  
9 threats of consequences, promises of leniency, false  
10 evidence ploys, don't they need to use that to get  
11 accurate statements from people who don't want to  
12 tell the truth?

13 A Absolutely not. In fact, numerous studies have shown  
14 that it increases the chance of inaccuracy. There  
15 are other protections out there that get information  
16 without the use of threats. Journalists are one.  
17 Private investigators, they don't have the power to  
18 tell somebody they're going to get locked up or  
19 something along that line. In the UK, all of these  
20 techniques -- they used to use the Reid technique and  
21 such practices like that. They've outlawed all of  
22 that stuff. They don't do interrogations anymore,  
23 they're not allowed by law, and they still get tons  
24 of useful, reliable and accurate information by the  
25 process that they teach there.

1 Q Now, let me ask you if you agree or disagree with  
2 this statement. These techniques that we've talked  
3 about of theme development, threats, are they  
4 effective to get coercions and statements for  
5 people?

6 A They're very effective. That's why they've been used  
7 for so long.

8 Q And are they also very effective for getting false  
9 confessions?

10 A They -- yes, they've been shown to also -- when  
11 compared to systems that don't use those threats,  
12 such as they have in the UK, they've been shown to  
13 not only -- yes, they get good confessions, but they  
14 also increase the number of unreliable or false  
15 confessions as well in statements.

16 Q Besides these techniques, are there other things that  
17 can contribute to getting bad or unreliable statement  
18 evidence?

19 A Sure. Tunnel vision.

20 Q Can you explain that? I'm sorry for interrupting  
21 you. Can you explain what tunnel vision is?

22 A Tunnel vision is -- it's one of those comic devices.  
23 What they are is basically things that our brains do  
24 in the way that we process evidence that kind of  
25 screws up how we interpret things. Tunnel vision, a

1 lot of people equate it to things -- what happens  
2 like if you were in a car accident, you suddenly  
3 focus on one little thing and you don't see things  
4 that are -- that are happening around you. In an  
5 investigation, if a detective falls victim to tunnel  
6 vision, then they don't see the alternative  
7 explanations, the alternative suspects. They see it,  
8 okay, this person is guilty and so I'm going to  
9 interpret -- I'm going to interpret everything that  
10 happens through that lens.

11 Verification bias, that's what they call an  
12 aspect of tunnel vision, is when I have a tendency --  
13 I've convinced myself that this is the truth.  
14 Anything that doesn't fit my theory, anything that  
15 doesn't prove that this is the truth, I'm either  
16 going to discredit or ignore. And it's just a very  
17 common thing that happens to all of us in all sorts  
18 of situations in our lives. But that's one of the  
19 reasons that some of the researchers say that the  
20 actual Reid technique itself attributes to false  
21 confessions because it encourages tunnel vision. The  
22 detective is going in there already thinking that  
23 I've determined what the truth is, I just need to get  
24 the person who I'm interrogating to admit to me what  
25 I think is true. And what if I have it wrong.

1 Q Are police investigators usually aware that they have  
2 this kind of cognitive bias or tunnel vision?

3 A None of us are. We always have a tendency to see it  
4 in other people but we don't have a tendency to see  
5 it when it's happening to us. I -- when I talk about  
6 it to cops, I kind of say it's like having a bad  
7 relationship. All your friends know that you're in  
8 it, but you don't until you're able to extricate  
9 yourself out of it and look back. But at the time,  
10 oh, she loves me, you know, all that stuff, and  
11 they're going, oh, no, she doesn't. So --

12 Q Is there a way to counter tunnel vision?

13 A Yes, there is. It's not just knowing about it,  
14 because like I said it's often hard to get over it  
15 once you're in it. What a lot of places are now  
16 doing, what they promote is the use of a devil's  
17 advocate, somebody who is outside of the  
18 investigation whose job it is to examine the evidence  
19 and say, okay, I'm going to challenge your  
20 interpretation of the evidence. You think it means  
21 this, but I'm going look at it from this viewpoint  
22 and we're going to see what it says. Basically it's  
23 called developing investigative mindset. You don't  
24 believe anything and you challenge everything, and  
25 you look for proof that -- rather than we in law

1 enforcement, we have a tendency that once we develop  
2 a theory, we want to engineer evidence to prove that  
3 theory. That's the verification bias. What the  
4 devil's advocate does is they want to test the  
5 theory, does the evidence prove or disprove it, and  
6 you follow the evidence but not the theory.

7 Q How does a -- a law enforcement officer or how can a  
8 person, rather, evaluate the accuracy and reliability  
9 of statement evidence?

10 A It's basically a -- roughly a two-step process, and I  
11 talked to you before about the holdback evidence.  
12 This is information that I've developed during my  
13 investigation that shouldn't be out there in the  
14 public, it shouldn't be known to anybody else but  
15 somebody who was there and, like, information, as we  
16 love to say, that only the true killer would know.  
17 Now, during the process of the interview or  
18 interrogation, if you provide that information to me,  
19 then that's a good indicator that you were there and  
20 that you saw. The caveat to that is I have to be  
21 able to show that the information originated from you  
22 and not another source. Another source might be,  
23 well maybe you saw it in the news or maybe the  
24 neighborhood, there's a rumor in the neighborhood  
25 going around and that's where you picked up that

1 information. Unfortunately, a lot of times what  
2 happens is during the interrogation process, because  
3 we're so convinced that that person has this  
4 information or whatever, we unintentionally, through  
5 the way that we question people and the things that  
6 we do, we provide the information to them, and  
7 thereby we contaminate the investigation. And we can  
8 do it in extremely subtle ways. One of the things  
9 that we're taught not to do is not to use leading  
10 questions, like he had a -- he had on a blue hat,  
11 didn't he. Well that's a leading question because  
12 you're telling the person that the suspect had on a  
13 hat and that it's blue. You know, that's a form of  
14 contamination. Another form would be if the suspect  
15 gives you the wrong answer and you accuse them of  
16 lying or the answer that you think is wrong and  
17 accuse them of lying and eventually they get or they  
18 somehow extract from you the information and they  
19 give you the right answer and you go, oh, very good,  
20 now we're making progress. Showing crime scene  
21 photos, all kinds of ways like that. There is very  
22 subtle ways that the suspect can pick up this  
23 information because, like I remember, if this is a  
24 person who doesn't have the information or who is  
25 innocent and yet they truly believe, oh, my God, this

1 person is telling me I'm going to jail for life,  
2 they're telling me that I got five witnesses  
3 testifying against me, they're telling me that the  
4 only way I can escape this is by saying this, I'm  
5 going to figure out what they want me to say, and so  
6 the interrogations often become a game of 20  
7 questions, a child's game where I'm picking up bits  
8 and clues and I'm developing a narrative that's going  
9 to be acceptable to the investigator and that he'll  
10 adopt as the truth.

11 Q Is it possible to avoid contamination?

12 A It is.

13 Q How does one do that?

14 A By knowing how it occurs, and by carefully knowing  
15 how to write -- ask questions without putting the  
16 evidence in there, such as leading questions.

17 Q Has there been some change in police practices to  
18 avoid contamination that you're aware of?

19 A Well, yes. The main things -- there are things that  
20 we've done in the past, because we recognize that  
21 contamination occurs, one of the basic principles of  
22 witness interviewing is that you separate your  
23 witnesses, you don't want one witness talking to the  
24 other because if you have -- if you're doing that,  
25 then a lot of times this witness will say, well,

1           didn't you see this, and the other witness starts to  
2           fill in the blanks of what they missed. So we  
3           separate witnesses, things along that line. But  
4           videotaping now is one of the biggest things, most  
5           important things, because what videotaping does, it  
6           allows you to go back and review the interrogation to  
7           pick up on where potential contamination occurred and  
8           see whether or not it happened. And that helps --  
9           also, if it's used for training purposes, then the  
10          detective can get better at avoiding contamination.

11        Q    What about showing -- there's been some testimony  
12            regarding if somebody has seen a witness's picture --  
13            rather, I'm sorry, a -- a witness has seen a person's  
14            picture in the newspaper, all right, and then  
15            contacts the police and said I think I saw this  
16            person. Would you show that witness a photo array?

17        A    I would not personally, simply because you can't --  
18            you couldn't tell -- maybe that witness picked out  
19            the person from the photo array because they really  
20            recognized them from the photo array, but you just  
21            don't know whether or not the memory from the  
22            newspaper picture or whatever transferred over into  
23            the photo lineup. So that would just cause that  
24            photo array to be brought into question, whether or  
25            not they really picked it out because they remember



1           or they picked it out because they first saw the  
2           person in the newspaper.

3       Q     Okay. Let me ask you, how do you corroborate a  
4           confession, or not a confession, a statement is what  
5           I meant to say.

6       A     Well, a statement, a confession, statements from  
7           witnesses, victims. Like I said, one of the things  
8           that do is you look at it, does it contain  
9           information that you believe to be true based on the  
10          crime scene analysis, based on the physical evidence  
11          and things like that, and can you show that that  
12          information was provided without contamination. One  
13          of the things that I do is I also say, okay, if what  
14          the witness is telling me is true, what would I  
15          expect to find at the crime scene, and I'll see if  
16          it's there. A good way of doing it is what you're  
17          always looking for is -- in every single interview  
18          and interrogation, the gold standard is are they  
19          going to tell me something I didn't already know that  
20          I now can go out and corroborate. And if you're able  
21          to go out and do it with physical evidence, that's  
22          the best type of corroboration. However, physical  
23          evidence can be misinterpreted as well. I always  
24          have to put that caveat in there. As an example,  
25          let's say in a sexual assault case you have a victim

1           who's telling you that she's been sexually assaulted.  
2           There is bruises on her face, that's corroboration;  
3           there is signs that she has had sexual intercourse,  
4           that's corroboration; there is the physical evidence  
5           recovered from her body that contains DNA, that's  
6           corroboration, and if she's saying that this suspect,  
7           you know, that she was raped by an unknown person.  
8           However, that's good corroboration. However, if the  
9           DNA came back to her husband, then that corroboration  
10          isn't as strong, so you always have to, like I said,  
11          even though it's physical, you have to go -- take it  
12          as far down the road as you can.

13                 You can also corroborate it by going back and  
14          double-checking with witnesses. Does what the  
15          suspect or the witness is saying match up to what  
16          other witnesses are saying. The problem is a lot of  
17          times we'll do what we call cross-contamination or,  
18          in the case of a confession, post-confession  
19          contamination. You got to be very, very careful.  
20          You can't go back to a witness and say so and so is  
21          saying that this is what happened, is that true,  
22          because what you're doing is you're telling the --  
23          one witness what the other witness is saying, the  
24          same thing that you were trying to avoid when you  
25          kept the witnesses separate, except now you're the

1           one conveying the information. It happens a lot in  
2           confessions. If -- let's say the victim says, well,  
3           the suspect did A and B, and you get a suspect who  
4           confesses and say that they did A, B and C, they go  
5           back to the victim and say, well he confessed but he  
6           said he did C, did he do C as well, and the victim is  
7           going, well, he confessed so he must have done it, so  
8           maybe I don't remember C, and the victim incorporates  
9           C within her statement. Memory's kind of one of  
10          those things that you have to be careful about when  
11          you're trying to recover evidence from it.

12       Q     Okay. Now before I get to the specifics of your  
13              review in this case, after reviewing all the matters,  
14              did you write a report in connection with this  
15              case?

16       A     Yes, I did.

17       Q     I'm showing you what's been marked as Exhibit 191.  
18              Is that the preliminary report you wrote in this  
19              matter?

20       A     Yes, it is.

21       Q     And with that report is there an appendix of the  
22              materials that you have reviewed up until the date of  
23              your first report which was at the end of December?

24       A     Yes.

25       Q     Then at a later date did you write a supplementary

1 report after reviewing additional materials?

2 A Yes.

3 Q And that's dated February 29th, 2016?

4 A Yes.

5 Q And did you even after that review a few additional  
6 items --

7 A I have.

8 Q -- that we've already discussed here?

9 A Yes.

10 ATTORNEY VISHNY: Judge, I would move  
11 Exhibits No. 191, 92 and 93 into evidence.

12 THE COURT: Any objection?

13 ATTORNEY SCHNEIDER: No.

14 THE COURT: Those exhibits shall be  
15 received.

16 Q (BY ATTORNEY VISHNY) All right. I'm going to ask  
17 you just first a general question and then we're  
18 going to go through some of the witnesses in this  
19 case.

20 Did you observe some of the problematic  
21 techniques that you've discussed occurring in this  
22 investigation into the homicide of Joshua Richards?

23 A Yes, I did.

24 Q All right. Let's -- I'm going to talk to you about  
25 some of the witnesses, not all of them, but some of

1           them.

2                   I'm going to first direct your attention to  
3           Phong Lee's interview. And what we're going to do,  
4           I'm going to ask you these things in the  
5           chronological order of the way the investigation went  
6           as opposed to witness by witness. All right?

7    A    Yes.

8    Q    All right. Now, did you review Phong Lee's  
9           interrogation that occurred on December 9th by  
10          Sergeants Schira, and I can't remember if it's Meyer  
11          or Tauber right now. Tauber. Did you review that?

12   A    Yes, I did.

13   Q    Now, did you observe -- when you reviewed that  
14          interrogation, did you determine that there were some  
15          problems that, excuse me, gave you concerns about the  
16          techniques used and whether it would produce a  
17          reliable statement?

18   A    Yes, I did.

19   Q    Can you please tell the jury what those were. And  
20          don't be afraid to let me get in a question every now  
21          and then.

22   A    Okay. I have transcripts that are marked up. Is  
23          that stuff that I can --

24   Q    Yes, you may use them. Yes, you may. So I'm going  
25          to refer you, first, to we have it as Exhibit No.

1           114, you have it as Disk 6, Item 43. Can you tell  
2           the jurors what problems you observed in that  
3           particular conversation that they had with Phong  
4           Lee?

5       A   Well, in general with this conversation, as with the  
6           others, you saw -- what I would come across are both  
7           real and implied threats of inevitable consequences  
8           such as being charged with a crime, you know, jail  
9           time, life in prison, that sort of thing, and they  
10          would be given the option of either being go to jail  
11          or cooperating as a witness. There was also times in  
12          there where they were basically told what the  
13          detectives theory of the case was, which kind of  
14          indicated what the detective wanted them to say until  
15          such time -- in order for them to receive the benefit  
16          that was being offered by the detective.

17                 Just as an example, I'm just only doing a few  
18                 examples here for each one, it's on Page 13, and it  
19                 starts with the detective saying, I know but you were  
20                 there when it happened. You were there and you know  
21                 who did it. Mr. Phong goes -- or Phong goes, I don't  
22                 know who did it. The detective, well, it was the guy  
23                 who ran out with you.

24                         ATTORNEY SCHNEIDER: Mr. Trainum, can you  
25                 stop? Can we approach because you might have a

1 different set than we do?

2 ATTORNEY VISHNY: We're just not sure if  
3 you have the same. Some of these are numbered with  
4 different pages.

5 THE WITNESS: I apologize. Should I step  
6 away?

7 ATTORNEY SCHNEIDER: You're fine. We want  
8 to just compare our page numbers.

9 ATTORNEY VISHNY: It's a Google docs versus  
10 Microsoft Word that created these problems.

11 Just let us know, Mr. Trainum, what page you're  
12 on. And yours, Google docs didn't put line numbers  
13 in.

14 THE WITNESS: Okay.

15 THE COURT: And, counsel, if at any point  
16 in time Mr. Trainum's going over something or you're  
17 lost, just let me know and then we can stop things,  
18 you can find where we're at and then we can  
19 proceed.

20 ATTORNEY VISHNY: Sure.

21 Q (BY ATTORNEY VISHNY) Okay. Returning back to where  
22 we were, I think that was the top of Page 13, if I  
23 was right. Is that where we were?

24 A Towards the top of Page 13, that's correct.

25 Q Okay. So go ahead.

1     A     The detective said, I know but you were there when it  
2           happened. You were there and you know who did it.

3           Phong: I don't know who did it. Detective: Well it  
4           was the guy who ran out with you, and I know that.

5           Phong: I ain't -- I don't know. Detective: Listen,  
6           listen, listen to me. Okay. The problem is he was  
7           looking at the video. I don't want you to get jammed  
8           up for conspiracy, do you understand, I'm talking  
9           about your life right now, we're talking about your  
10          life.

11                 So basically he's telling him who he believes  
12          did this crime, and he's also saying that you have  
13          the choice, this is a conspiracy and we're talking  
14          about you cooperating and preventing you from ruining  
15          your life.

16         Q     Is there any other example in that particular  
17                 interrogation that you think is important to discuss,  
18                 bearing in mind that the jury has heard this gone  
19                 over many times, but is there something that  
20                 particularly stands out?

21         A     Let's see. On Page 19 right about the middle of the  
22                 page there -- there's a detective going, think about  
23                 a homicide trial and think about what a jury is going  
24                 to think. You guys picked up on that?

25         Q     Yeah. We know where you are.



1     A     Basically going over, you hide clothing, that's all  
2           party to the crime. This is a homicide and not a  
3           game.

4           A little bit further down the detective goes,  
5           look, I'm trying to help you out, buddy.

6           And then a little bit further down the detective  
7           goes, you got to think about yourself right now,  
8           Phong. You're telling me that you had nothing to do  
9           with it, that this was somebody else that just  
10          immediately -- immediately reacted to what this guy  
11          was saying.

12          They also brought up that it was racial like  
13          that. So they're talking -- here's a theme that I  
14          was talking about that they're trying to get them to  
15          adopt, but then they go down, do you want to go away  
16          for the rest of your life or we need to find out if  
17          it's a self-defense thing. A self-defense theme is a  
18          suggestion of leniency there. That would have been  
19          taught -- that would have been inappropriate  
20          according to the teaching.

21          On Page 23, again, in the middle, the detective  
22          basically tells him who does it or asks him who does  
23          it. Phong goes, I don't know who did it. Detective  
24          goes, you know because you run out, the guy is right  
25          with you, again suggesting that -- exactly who the

1 person is.

2 Q Now, when you -- that particular sentence that you  
3 just read where the detective says, the guy is right  
4 with you, is that an example of what you call  
5 contamination?

6 A That's -- that is contamination because it's  
7 suggesting to the witness who the person is that the  
8 detective wants them to name as the shooter.

9 Q Is there any other example that stands out for you in  
10 this particular interrogation regarding contamination  
11 or else that you think is very significant or do you  
12 want us to --

13 A Well, I had several. Is there one in particular?

14 Q I'm going to ask you about Page 44. For you it's  
15 kind of just below the second half of the page, for  
16 us it's Line 29.

17 A Okay.

18 Q Is that another example?

19 A Yes. The detective goes, you can't get over the fact  
20 that we got -- that we got a guy with a gun in his  
21 hand and you're in the picture. Phong goes, I don't  
22 care, I'm going to tell you that they're not the ones  
23 who did it. The detective goes, you're not the one.  
24 You don't have to convince us, buddy, you got to  
25 convince the District Attorney's office that's going

1 to charge you, and you got to convince the jury  
2 that's going to look at this stuff and say of course  
3 he knows. Just like Dan said, you bolted from the  
4 scene before anybody else, you hid your clothing, you  
5 lied to us when you first got here about what -- you  
6 weren't down there and that it was some girl and  
7 nothing was going on.

8 Q Okay.

9 A And then at the very end the detective goes, what do  
10 you think a jury is going to look at this and say,  
11 they're going to say guilty, guilty, guilty.

12 Q All right. Why don't we move on from Phong Lee,  
13 unless you think there is something else of  
14 particular importance, and let's talk about the next  
15 transcript, and this would be -- or the next  
16 interview. That would be Joe Thor on December 10th.

17 One of the techniques that you talked about --  
18 or let me ask you this. What's a high pressure sales  
19 tactic in an interrogation?

20 A One of the high pressure sales tactics that's  
21 frequently used I had mentioned is the use of a time  
22 constraint. We told you that, you know, you're going  
23 to face serious consequences and the only way to  
24 escape those is by telling us what we want to hear,  
25 but this is your only opportunity, you have now or

1           never to do it. It's just like a salesman telling  
2           you, look, if you want to buy this car, you better  
3           buy it now because I got a guy coming in at 5:00  
4           who's got cash for it. You better make up your mind  
5           now. So it increases the pressure for you to jump on  
6           that -- that great deal that may not be so great at  
7           the time.

8       Q     I'm going to direct your attention to Page 28, and  
9           for me it starts with Line 5.

10      A     Okay.

11      Q     I just want to clarify the record. This is actually  
12           the second time Joe Thor talked to the police on  
13           December 10th, but the other time is very short.

14      A     That's correct.

15      Q     So we're just going to go right to this. So looking  
16           at that on Page 28, beginning at Line 5, what -- what  
17           do you make of what you read there?

18      A     The detective goes, are dear friends more important  
19           than your family because right now what you tell us  
20           in the next ten minutes is going to decide whether  
21           you spend the rest of your days with your family or  
22           you spend the rest of the days with your buddy, and  
23           he goes on to say, in prison somewhere. And that is  
24           a high pressure sales tactic, like I said, you have  
25           this opportunity to tell us what we want to hear or

1 bad things are going to happen.

2 Q And can you give us an example of another similar  
3 tactic, maybe not high pressure sales, but of these  
4 kind of threats to go to prison or anything of that  
5 nature, consequences, adverse consequences that  
6 can --

7 A Well, on Page 29 -- I'm sorry, I didn't want to  
8 interrupt. On Page 29, right about the middle of the  
9 page, the detective continues, and you better make a  
10 decision right now. Do you want to be a part of this  
11 investigation or do you want to go down with this guy  
12 because I'm talking about the rest of your life.

13 Q There's been a phrase that's been tossed around here  
14 that occurs in a number of these interrogations which  
15 is similar, do you want to get yourself on the  
16 witness line or do you want to be on the suspect  
17 line. Is that another example of what you're talking  
18 about?

19 A That's another example of what I'm talking about.  
20 You only have two options. It's kind of a form of  
21 the alternative question, you know, a very extreme  
22 form, either you want to go to prison or do you want  
23 to be free and be on our side, but to be on our side,  
24 you have to tell us what we think is true.

25 Q Are there any examples of contamination by the

1           detectives in this conversation with Joe Thor on  
2           December 10th?

3       A     Well, just on the same page, 28, in the very --  
4           towards the bottom middle what they're telling him,  
5           that you -- we know from the video that you know who  
6           shot him, you ran out of the building with him. And  
7           Joe goes, Phong did not shoot him. See, I didn't say  
8           Phong, did I. Right. I'm serious, Phong did not do  
9           that. The detective goes, I didn't say Phong, did I.  
10          Joe: No, you didn't. The detective: The other guy  
11          did. So he's telling him specifically who he needs  
12          him to name in order for him to be believed at that  
13          point.

14       Q     Is there any contamination that you see in this  
15           interview regarding the firearm that was used in the  
16           homicide?

17       A     Yes. It would be on -- one is on Page 80, and Joe --  
18           at the very top Joe is actually challenging --

19                   ATTORNEY SCHNEIDER: Can you just wait  
20           until I get there please? Sorry.

21                   THE WITNESS: I'm sorry.

22                   ATTORNEY SCHNEIDER: Okay.

23       A     I'm sorry. I'm going to go back to Page 79 at the  
24           bottom, and what they're talking about is the  
25           surveillance picture of Paul going out with the

1 object in his hand that the detectives are saying is  
2 a gun. And the detective is pretty much going, it's  
3 a fricking gun. Everybody that we've shown it to who  
4 isn't involved and aren't suspects are going, holy  
5 shit, that's a gun. And he goes along that line.

6 On Page 80 Joe says, it doesn't -- it does not  
7 look like a gun. Come on, obviously, would a gun be  
8 that small. And the detective goes, yeah, it would  
9 be. It's a .25 caliber.

10 Q Is there another time in this interrogation where the  
11 specific type of caliber gun is mentioned?

12 A Yes, it is, on Page 150. And again, it's towards the  
13 bottom of the page. Joe is saying, there was  
14 something in his hand, I thought it was a bottle.  
15 They're talking about the picture, and Joe -- and the  
16 detective says this, Joe, you guys said it was a gun.  
17 The detective says, this gun is this big, that's all  
18 it is, is a little .25. I can reach in my pocket and  
19 pull it out and, bang, it's done.

20 So here again is just an example of them  
21 providing information that if Joe had provided it to  
22 them first, that would be significant, but because  
23 they're providing it to him first, you have to  
24 question where -- where did the actual information  
25 come from. As I frequently say, when you look at

1           this, you -- I try to figure out who is telling the  
2           story, the witness or the suspect or the detective.

3       Q     And I know that there is a really, really long  
4           transcript and the jury has heard many things  
5           repeated several times. Is there anything that you  
6           just want to point out about this?

7       A     I'll spare you guys. Looking real quick. I don't  
8           think so.

9       Q     All right. Would it be a fair characterization to  
10          say that the things that you have pointed to, these  
11          three -- these brief examples of contamination,  
12          threats to do how much time, whether the -- that the  
13          person has to decide today if they're a witness or a  
14          suspect, that that -- did you count how many times it  
15          occurred in that transcript?

16      A     I started to at one point but I just lost track. I'm  
17          sorry.

18                   ATTORNEY SCHNEIDER: Okay. It will  
19          probably come back but for now it's gone.

20                   ATTORNEY VISHNY: I thought it was an  
21          objection at first.

22                   ATTORNEY SCHNEIDER: I'll be a little  
23          louder if I have an objection. Bear with me.

24                   ATTORNEY VISHNY: All right.

25      Q     (BY ATTORNEY VISHNY) So is it fair to say it just



1           got to be too many to count up, is that what you  
2           mean, or that was pointless?

3     A     It -- like I said, it just got to be so many and I  
4           just lost track of that and went on to other  
5           things.

6     Q     Okay. I'm next going to ask you about Exhibit 189,  
7           which is Item 89 in this case, and this is the first  
8           interview of Paul Lee which took place on December  
9           11th at Norka, his place of employment.

10    A     Yes.

11    Q     Did you see examples of false evidence presented to  
12           Mr. Lee?

13    A     I did.

14    Q     Can you tell the jury what that is or give an  
15           example? Again, we're not going to go through the  
16           whole thing.

17    A     Again, one example would be on Page 51 starting right  
18           about in the middle when the detective starts by  
19           saying, I'm not -- I'm not just relaying information  
20           that was told to me because, you know what, there is  
21           one, two, three, four, five different people saying  
22           Paul shot him in the head. Paul goes, please, man.  
23           The detective goes, yeah, you know how many people  
24           were there. How could they not see it. How did they  
25           not see it. You think that there's five different

1 people who have told us who you're the one who shot  
2 him in the side of the head and they're all lying.  
3 They did not even know each other.

4 Q Is there an example in this that you can point out of  
5 this high pressure sales tactic or time constraints  
6 that you previously talked about?

7 A Yes. On Page 59.

8 Q 59. Okay. 59, right?

9 A 59 right towards the bottom. Paul is -- basically  
10 they're challenging him about what's in his hands.  
11 Paul was saying, I had nothing in my hand. The  
12 detective is going, well I can prove otherwise, so do  
13 you want to explain what happened or do you just want  
14 to go down. I didn't do it, I didn't do it. I --  
15 all the way to life in prison. Paul says, tell you  
16 straight up I didn't do it. The detective, you want  
17 to go -- I'm telling you now is your last chance to  
18 provide an explanation as to why you shot that guy.

19 Q Now, on Page 66 did you observe some contamination  
20 that occurred in this interrogation?

21 A Yes. Well, earlier on I believe the detective -- in  
22 one of my earlier examples the detective mentioned  
23 that the victim was shot in the left side of the  
24 head.

25 Q Okay.

1     A     In this case, the detective -- it's right towards the  
2           bottom of the page. Paul starts with, I don't know,  
3           I just punched him and I stepped back. The detective  
4           goes, and then someone else is going to come up for  
5           no reason, even though he's arguing with you and  
6           Phong, and he's so pissed off at you guys for -- some  
7           guy for no reason is going to come up and shoot him  
8           in the side of the head at point blank range.

9     Q     Is there anything else -- again, how many times did  
10          you see examples of these kinds of threats, time  
11          constraints in this transcript?

12                 Well, first of all, how many pages long is this  
13          transcript?

14     A     I have 110.

15     Q     Okay. Then you definitely -- yeah. Okay. And did  
16          you see this kind of threat, telling people that he  
17          was going to go to prison for life, you know, he  
18          better be a witness or tell on somebody else, did you  
19          see more examples of that in this?

20     A     In this one it pretty much -- not so much that he  
21          better tell on somebody else but pretty much that he  
22          did it and that this is his chance to confess.

23     Q     Now, I'm going to turn next to Exhibit No. 176 which  
24          is an interview with Paul Lee by Sergeant Chue Thao  
25          and John Schira that took place at 12/12/13 at 12:41

1 a.m.

2 First of all, was there a change that occurred  
3 in Paul Lee's status between the Norka interview you  
4 were just talking about and the December 12th, early  
5 morning hours, interview?

6 A Yes, there was.

7 Q And what was that change?

8 A Paul had been placed under arrest at the end of the  
9 first interview and transported down to the police  
10 station, I believe.

11 Q All right. So in this second interview is -- he's in  
12 custody?

13 A He's now in custody.

14 Q Getting to this interview, and we'll go through this  
15 now in chronological order, I'm going to ask you  
16 about things that you found to be significant in the  
17 interview by Sergeant Schira and Sergeant Thao. What  
18 would you like to point out first?

19 A Well, we can start with the very beginning of the  
20 interview pretty much after we do Miranda, and it's  
21 on Page 5, and where again we're talking about --  
22 they're expressing, on Line 197, that there's no  
23 shadow of a doubt that they did this, that there's a  
24 gun in his hand. That's what they were saying, that  
25 there is no shadow of a doubt, that there is a gun in

1 the hand. Then they go -- when they do -- see --  
2 when they -- I'm sorry. When they do see that we  
3 have nothing, you're the only one that did not  
4 because you -- because you had that gun. So if you  
5 want to go down hard, you know that you're gonna go  
6 down hard. And then they talk about your friends are  
7 telling us, so this is your chance to really take  
8 advantage of that. And it's at this point when they  
9 start saying, well if you didn't do it, who did. And  
10 that is kind of a theme that picks up at this point  
11 in the interrogation.

12 And now the next page, they basically bring up,  
13 on Line 231, do you know what the statutes to this --  
14 the consequences of this are. It's basically life in  
15 prison, they say. And there is only two options,  
16 they give him only two options in Line 238, and the  
17 two options are you either did it or somebody else  
18 did it, so either confess to it or tell us it was  
19 somebody else at that point.

20 Q Do they also mention anything when they said it's  
21 either you or somebody else regarding a firearm right  
22 after that on Line 239, Page 6?

23 A I think you're --

24 Q Okay. At line --

25 A I'm sorry. Yes. I didn't go to -- I misspoke. They

1           said that there's two options, either you did it or  
2           you handed the gun to somebody or somebody handed the  
3           gun to you, so either you're the shooter or somebody  
4           else did the shooting and handed the gun to you at  
5           that point.

6       Q     All right.

7       A     Sometimes these old eyes.

8       Q     Okay. Now, I'm sorry, I'm asking the wrong question.  
9           On Page 7 and 8 is there any discussion on that page  
10          as this continues that concerns you again with the  
11          interrogation methods being used, Page 7, I think  
12          he's going to Line 285, but I'm not sure. He'll have  
13          to tell us.

14      A     Well, again, what they're doing here is they're kind  
15          of presenting some false evidence ploys, they're  
16          talking about threats and they're also offering  
17          leniency. On page -- on Line 29 -- 292 on Page 7,  
18          can you let these other guys tell us, you know, why  
19          they ran. And Paul answers, why. And the detective  
20          says, because there was a shooting and one of them  
21          turned around and looked at you and said why did you  
22          shoot him. Of course Paul said it didn't happen.  
23          They then tell him, well that's what they're telling  
24          us, you know. Basically your own buddies are saying  
25          why did you shoot him, why did you shoot him.

1           At the very bottom of the page, 315, just like I  
2           said, it's no longer a question that you did it, now  
3           the question is why you did it. This is at the top  
4           of Page 8. The question is why you did it. And you  
5           got to try to minimize what happened because there's  
6           a big difference between first-degree intentional  
7           homicide and reckless endangerment or even  
8           self-defense. So again, they're maximizing it and  
9           they're minimizing it there. I've been in court.  
10          I've seen cases like this. They're gonna say that  
11          you're guilty.

12       Q     And skip down a few lines.

13       A     Yes.

14       Q     Do they continue to -- when they start saying, so  
15           what I really would like for you, did they start  
16           developing a theme there?

17       A     I'd like for you to tell me that there was a reason  
18           for this to happen, that you were protecting your  
19           friends. And so that's the psychological or moral  
20           justification that I was talking about there. That's  
21           that type of theme that would typically be  
22           appropriate.

23       Q     Do you see more of this as this unfolds, as the  
24           interrogation unfolds?

25       A     Like I said, this is pretty much the same theme

1 throughout this entire thing. On Page 11 right in  
2 the middle of a page, Line 468, they're basically  
3 telling him, we already know the facts, what you got  
4 to think about is what the jury is going to think  
5 about because the jury is made up of good intelligent  
6 people. And basically later on he talks about, I  
7 believe that object in your hand to be a gun in my  
8 training and experience. What do you think they're  
9 going to say. They're going to say that you were  
10 guilty. And I'll be honest with you, I'll do this  
11 jury trial tomorrow. The people will win.

12 Q All right. Right after that statement, is there  
13 something significant that occurs in the very next  
14 sentence in this interrogation?

15 A Yes.

16 Q What is that?

17 A At Line 485 then it kind of shifts. I'm going to ask  
18 you one question. The question is going to come down  
19 to how you want to go about this. Okay. Did Chong  
20 do the shooting.

21 Q Now, until now, had Chong's name been brought up as a  
22 potential person who had committed the shooting by  
23 Paul Lee?

24 A I had not seen it anywhere in these transcripts.

25 Q Let me ask you this. Let's just say the police



1 officers conducting this interrogation receive some  
2 evidence in the form of a rumor that Chong Lee had  
3 done it and they had been told you should investigate  
4 Chong Lee as a suspect as well. All right?

5 A Okay.

6 Q So let's say their supervisor tells them or, as in  
7 fact did happen in this case, the supervisor says we  
8 also want to consider Chong Lee as a suspect before  
9 starting this interrogation. Is it fair to say that  
10 it would be a good idea for the police investigators  
11 to try to see if there is any information they can  
12 get from Paul as to whether or not Chong is the  
13 suspect, or the perpetrator rather?

14 A That would be a line that you would want to  
15 investigate if you have that, most definitely,  
16 because like I said, you don't want to cut yourself  
17 off to alternative suspects.

18 Q All right. So in this particular case, the way it's  
19 done is by just straight out asking, Paul, is Chong  
20 -- did Chong do the shooting. Is that an appropriate  
21 way to go about investigating that particular line of  
22 inquiry?

23 A Well, the line of inquiry at first is not as  
24 problematic as what follows after that.

25 Q And why don't you tell us about that.

1 A Well, basically, again, they then shift to well we  
2 want to give you the benefit of the doubt.

3 Q What page is that?

4 A This is on Page 12.

5 Q If you could just tell us the line?

6 A It's going to be Line 496 at the end of it. That's  
7 why I keep giving you the benefit of the doubt.  
8 That's the first time I've heard that phrase. If  
9 you're trying to cover for somebody, for Chong,  
10 you're going to go down hard on this because we have  
11 proof on you that it -- at this time. But now  
12 they're trying to push -- he's saying, I'm pushing my  
13 ass hard to try to save yours. I'm trying to save  
14 you, give you the benefit of the doubt. You go by I  
15 don't know, he was there or not, is not going to put  
16 you right. So if you're not -- if you're saying that  
17 you don't know that he's there, that's not going to  
18 help you. Then he shifts and at Line 515 he says,  
19 I'm telling you that you're doing this to protect  
20 your brother. So they -- it sounds to me like  
21 they've totally shifted and they're giving him the  
22 option -- in fact, at Line 536 on the same page, Page  
23 12, they make it very clear, you either -- you did  
24 this or your brother did this. So we have the  
25 evidence to put you in jail for life, but if you

1           didn't do it, then you're going to have to tell us  
2           that your brother did this, because those are the  
3           only two options that you have at this point.

4       Q     And what is the concern that you have as somebody who  
5           has studied false statements and interrogation about  
6           this type of technique?

7       A     What's happening here is, like I said, Paul is facing  
8           the inevitable consequence that they have all this  
9           overwhelming evidence that he's guilty. He's being  
10          told that he's going to be convicted of this crime.  
11          But, however, if you say your brother did it, that  
12          changes the entire equation. So that's an out. And  
13          rather -- and it's something that's been suggested by  
14          the detectives. There's no other evidence at this  
15          point, from my understanding, except a rumor that  
16          Chong might have done it, and so what they're trying  
17          to do is actually build on that rumor by ways other  
18          than ones that could be corroborated.

19       Q     Okay. So the police have been told, and I'm just  
20          going to let you know, the police have been told and  
21          it's in evidence that a woman named Lisa told a woman  
22          named Alyson that she believed Chong did it. So that  
23          is the evidence that has been presented to the jury,  
24          just so you know, without -- I won't characterize it  
25          anymore as a rumor but this is what they've been

1 told.

2 A Okay.

3 Q So do they continue to say that Chong is -- that they  
4 continue along this line for a while until Paul then  
5 finally agrees with them that Chong is the person who  
6 did it.

7 A Yes. They continue, just like on Page 13, Line 553,  
8 think about forever, do you want to do forever in  
9 jail, in prison. And on Line 578, if you can't name  
10 the person, then it's gonna be you. So you either  
11 name the person or you're the one going to prison for  
12 the rest of your life. There is -- further down they  
13 say, there is no middle ground here whatsoever. And  
14 then it's over -- it's finally over on Page 21 -- I  
15 should say really Page 20 when they ask him  
16 specifically at the very bottom, was it your brother  
17 that shot him, and when he says yes, they give him a  
18 positive affirmation, okay, you're doing the right  
19 thing.

20 Q What is the importance of them giving this positive  
21 information, you're doing the right thing?

22 A Well, like I had talked about before, that's a form  
23 of contamination. I've come up with a theory, I want  
24 you to confirm my theory. If you're telling me  
25 things that don't confirm my theory, you're a liar,

1           you're resisting, but once you confirm my theory,  
2           we're on the right track, you're doing the right  
3           thing, good things are gonna happen. And like I  
4           said, that's that 20 questions game that I was kind  
5           of referring to earlier.

6       Q     All right. Direct your attention to Page 28, Line  
7           1245.

8       A     Okay. And at that point, what's happening here is  
9           what I'll call rescripting the narrative. We're  
10          coming up with more information to add to the story  
11          right here. And what the detective does on Line  
12          1245, besides -- what he's trying do is he's trying  
13          to corroborate what Paul is saying, because if he can  
14          do that, of course all this other stuff -- if he can  
15          get good corroboration from -- like independent  
16          corroboration, all this other stuff might be negated.  
17          But he says, okay, 1245, who besides you, who knows  
18          that Chong did the shooting. Answer: Probably just  
19          me. Question: No. There's got to be more people.  
20          Well, it was either -- it's just me or Joe. Joe  
21          Thor. Yes. Okay. So what else. When you guys ran  
22          that night, I mean you must have talked about it.  
23          You must have said, holy shit, right. I - and the  
24          next page - mean you guys ran up there, you took off  
25          your clothing for a reason. And he goes, no, only

1           they did, I didn't. And then further down the  
2           detective goes, right. But then you talk about who  
3           actually shot the guy. I mean that -- if you -- if  
4           you and I are friends and then all of a sudden guy,  
5           whatever, we're fighting and some guy, some guy gets  
6           shot, we take off running, we're going to talk about  
7           the shooting. We're going to say, holy shit, bottom  
8           just shot that guy, whatever. So that had to happen  
9           that night. They're suggesting that this  
10          conversation took place. And Paul goes, yeah. The  
11          detective goes, what then, what did you say. I mean  
12          what -- I mean did you say Chong shot that guy. The  
13          answer: No. We didn't know that Chong shot the guy  
14          until he told me on Monday. And then the detective,  
15          the positive affirmation, goes, okay, all right, well  
16          that makes sense. How did Joe find out. Answer:  
17          Hm. How did Joe find out. I don't know. Question:  
18          Do you think Chong unintelligible him. Is Chong and  
19          Joe friends. Answer: Yes. So maybe Chong told him.  
20          He's suggesting maybe Chong told him. You know, so  
21          you didn't tell Joe, somebody else did. And how do  
22          you know that Joe knows. Well he didn't say that Joe  
23          knows, he said it was me or Joe. Answer: I don't  
24          know. Question: Well you just said Joe probably --  
25          and I think it says don't, but I think from what I

1           remember it says does know, so how would Joe know.  
2           He goes, I don't know. Well how do you know that Joe  
3           knows that Chong shot him. Did he tell you. No. We  
4           don't know that. And he goes down, he probably went  
5           and told Joe that too. So you see in my opinion how  
6           this is beginning to develop because they're  
7           pressuring him, saying that these conversations had  
8           to take place.

9           Let's see. I'm trying to jump. The question.  
10          Oh, 1323. Oh, yeah. But you just said that Joe  
11          knows that Chong shot him. That's what he said. So  
12          what I'm asking is how does Joe know. How do you  
13          know that Joe knows. Did he -- did Joe tell you, I  
14          know that Chong shot him. And then answer: Chong  
15          told me straight up, Chong went over to Joe's house.  
16          So again, like I said, he goes from, well I know and  
17          maybe Joe knows to Chong told me straight up because  
18          he went over to Joe's house. But it's in response to  
19          the line of questioning and the suggestions that  
20          these conversations took place.

21        Q     All right. I'm going to ask you some questions about  
22               some discussion that goes a little further down about  
23               a diagram that occurred. All right?

24        A     Okay.

25        Q     So turning your attention to I think maybe Page 35, I

1 think, but unless you have a different page number.

2 A I think I have the same one as you these days.

3 Q So Page 35. Do you see them starting to talk about a  
4 diagram near the bottom of the page around Line 1565  
5 or so?

6 A Yes, I do.

7 Q All right. So -- is there anything you found  
8 problematic with the way that this was gone about?

9 A Well, one of the things that they do is they're  
10 asking him on the diagram, and where were you  
11 positioned. And now Chong, hm, and the other were,  
12 ah, positioned in relationship, you know, during the  
13 argument, and to when and then when the shooting  
14 happened. It's my recollection that nowhere in here  
15 does he put Chong in his memory around the shooting,  
16 but I interpreted that as he's trying to get him to  
17 inter -- to insert Chong within the diagram itself  
18 that he's drawing for him.

19 Q Okay. And did you observe some other, in your review  
20 of this, other contamination that occurred in this  
21 particular interrogation?

22 A Yes. On Page 41 we were talking about the injuries  
23 to the victim, and they start talking about -- on  
24 Line 1827 they start talking about the autopsy, and  
25 they're telling him that when we do autopsies, Paul,



1 we can tell you how close the barrel of the gun was  
2 to the victim's head. Um-hum. The detective: Okay.  
3 He wasn't shot from right back here. Answer:  
4 Um-hum. Detective: Okay. When he was shot, the  
5 barrel of the gun was probably almost touching like  
6 this close. So that's why we think you must have  
7 seen the barrel or the hand holding the gun. So he's  
8 telling him specifically, where before he mentioned  
9 the left side of the head, he's now showing how close  
10 the gun was and -- as well.

11 Q Okay. I'm going to -- is there anything else in  
12 particular that you want to point to in this  
13 particular interrogation or should we move on?

14 A I think we can move on.

15 Q Okay. Moving on to Exhibit No. 177, this is an  
16 interrogation continuing of Paul Lee about eleven  
17 hours or so later at 11 -- that begins at 11:58 a.m.

18 A Yes.

19 Q The detectives begin talking to Paul Lee and start  
20 seeing on Page 2, Line 76, about have -- they have to  
21 prove that it's not you, how can we prove it's Chong.

22 A Right.

23 Q So there is a discussion that goes on for a little  
24 bit about that. Are there any problems that you  
25 associate with that? And I know it goes on for a

1           ways.

2       A     It goes on for a ways. But basically now they're  
3           trying, of course, to disprove their original theory  
4           and prove their theory that Chong did it and so  
5           therefore they have to disprove the evidence. And at  
6           one point they start again talking to him about, on  
7           Page 3, Line 110, I mean, where he says, I mean, you  
8           said that he said something to Joe Thor, right. And  
9           the answer was, yeah, he told me that he stopped by  
10          Joe Thor's house. Okay. Before he came to mine.  
11          And then they go and they start talking about we got  
12          to be able to prove that it was you, wasn't it.

13                 And on Page 4 on Line 152 they ask him when was  
14          the first time that you saw him, meaning Chong, after  
15          the shooting. When was the first time you saw him.  
16          Paul then shifts what he had said earlier and he said  
17          at Joe's. And the question was right after the  
18          shooting. Probably an hour after.

19       Q     Okay. Now, the police didn't suggest that shift, did  
20           they?

21       A     No, they did not -- they did not suggest that shift.  
22           That shift came from Paul himself.

23       Q     Okay.

24       A     And -- however, they suggested right after the  
25           shooting, which I think would have been normal based

1 on the conversation as it was leading up to that.

2 Q Okay.

3 A Okay. And then that's when they started having the  
4 conversation, and that's when he said that he had  
5 just fucked up, and then -- and the question is, and  
6 did he say that he fucked up in front of everybody.  
7 Yes.

8 Q All right. So then another name is brought into it,  
9 right?

10 A Yes, yes.

11 Q And the police don't bring that name in it either?

12 A No.

13 Q Now --

14 A But it's on the -- Page 8 after that that the story  
15 does begin -- become more developed, and so it's on  
16 Line 332. That's when the detectives were asking --  
17 they were talking about being in the basement. Okay.  
18 When you guys were in the basement, just the four of  
19 you now, okay. Answer: Three of us. Oh, four.  
20 Chong. Okay. Detective: Okay. What was the  
21 discussion. I mean obviously he said he fucked up,  
22 right. Answer: Yes. And that's what the earlier  
23 conversation was about. The detective, right. He  
24 said he shot the guy. So we add that from the  
25 detective in there. Answer: Yeah. Question: Okay.

1           He said that to you guys. Answer: Yeah. Question:  
2           Okay. What else did he say that -- what now he needs  
3           to do next. There has to be something. And the  
4           answer is -- to the question, again, the second  
5           detective, was he planning on running. So what's  
6           been added to this by the investigators is he shot  
7           the guy and he's planning on running. And these are  
8           things that you later see incorporated into Paul's  
9           statement and other statements as well.

10       Q     What do you make of this -- I'm just going to turn  
11           you back a page or so to Page 6 when the detectives  
12           say to Paul on Page 6, Line 234, first -- right  
13           before that they're talking about how they have to  
14           prove Paul's innocent and they say, well we've got to  
15           overcome -- we built this case -- great case against  
16           you, now we have to get rid of that case to show it  
17           wasn't you, it was in fact your brother, and ask for  
18           his help. What do you make of that?

19       A     Well, they just need for him to help explain and add  
20           details that would help now corroborate their new  
21           theory that it was Chong that did it.

22       Q     And Paul then offers -- says that the only evidence I  
23           can get is if I went straight up to Chong and talked  
24           to him, like, you know, look Chong.

25       A     Right.

1 Q So that's Paul who makes the offer?

2 A Paul makes the offer.

3 Q And does the fact that Paul makes the offer, does  
4 that change the problems with this interrogation and  
5 the previous interrogations of Paul, does that change  
6 your analysis of this?

7 A No, I would say no. I mean, I -- I've seen that a  
8 lot of times in cases where people were guilty and  
9 not guilty as well. They make the offer. Sometimes  
10 people will take them up on it, sometimes they  
11 won't.

12 Q Eventually in this discussion, turning to Page 17,  
13 the police, and I'd say looking at Line 747, the  
14 police talk about that they may ask him to talk to  
15 Phong and Joe. Do you see any problem with that?

16 A Well, what they're saying here is you -- is they're  
17 recommending that since Phong and Joe might not  
18 cooperate with them and give them the information  
19 that they need against Chong that they're now seeking  
20 to, you know, prove did this, that they will get Paul  
21 to go say, look, you guys are my friends, I can't go  
22 to prison for life, so please help me out and provide  
23 the information to get me out of this situation.

24 Q Is that the same thing as asking somebody to set up a  
25 one-party -- a phone call where the person makes a

1 call on behalf of the police and the police can  
2 listen in and try to get information that way?

3 A That doesn't sound like it to me, I mean, because  
4 they've talked about one-party consent calls a couple  
5 of other times in this case and they didn't do it.  
6 This -- this sounds like, you know, you just need to  
7 recruit these guys to get on your side to help us  
8 bring this charge.

9 Q And do they in fact go on to say that as you get to  
10 the bottom of that page and the top of Page 18?

11 A Basically. But you got to get these guys to  
12 basically go to bat for you, right.

13 Q Okay. And what does Paul respond by saying?

14 A He says that he's going to go talk to Joe.

15 Q All right. Now, at some point at the end of this  
16 they take a written statement. Are there any  
17 problems that you see with that?

18 A Well, yes. On Line 28 when they start talking  
19 about --

20 Q What page?

21 ATTORNEY SCHNEIDER: What page?

22 A It's Page 28, Line 1208.

23 Q Okay.

24 A When they start talking about him creating the  
25 written statement, they go, look, I'm not going to

1 put any words in your head, and then they script out  
2 what they want him to write in the written statement.  
3 You got into an altercation with the guy by the name  
4 of Josh at Luna. While you were kind of struggling  
5 with the guy, fighting with the guy, Chong stepped up  
6 and shot him on the side of the head. So he's  
7 recommending, suggesting that he put that in the  
8 narrative, though I never saw anything in the  
9 conversation where he admitted to having seen Chong  
10 shoot him in the side of the head.

11 Q All right. Is there anything else or shall we move  
12 on to another interrogation?

13 A We can move on.

14 THE COURT: Attorney Vishny, Attorney  
15 Schneider, just step up for a minute.

16 (Bench conference.)

17 Q (BY ATTORNEY VISHNY) All right. We have three more  
18 to go through with you. They're kind of short. All  
19 right.

20 Then let's go -- the next person or, actually,  
21 simultaneously, but I'm going to ask you about Phong  
22 Lee who was interviewed on December 12th by Sergeant  
23 Thao and Tauber. Where is that? I don't think I  
24 have it right in front of me, but in that interview  
25 with Phong Lee with Sergeants Thao and Tauber, is

1           there -- do you have it? I can't say the exhibit  
2           number right now because I literally don't have it  
3           right in front of me.

4                    ATTORNEY SCHNEIDER: What name, Deja?

5                    ATTORNEY VISHNY: I'm trying to figure that  
6           out.

7                    ATTORNEY SCHNEIDER: 43?

8                    ATTORNEY VISHNY: No, it's not 43.

9                    ATTORNEY SCHNEIDER: 97 or 220?

10                   THE WITNESS: It's 97.

11                   ATTORNEY SCHNEIDER: Thank you, Mr.  
12           Trainum.

13                   THE WITNESS: Anything to move it along for  
14           everybody.

15                   ATTORNEY VISHNY: All right.

16    Q           (BY ATTORNEY VISHNY) That's a short interview where  
17           Phong Lee is interviewed. Are there any problems  
18           just briefly that you see in that particular -- with  
19           the way that that interview starts out?

20    A           Well, very briefly, leading into it, they -- on Page  
21           2, right about -- right below the middle of the page,  
22           they tell him that they want to make sure that he  
23           gets himself in line, they let him know that they've  
24           talked to Chong, they've talked to Paul, and they got  
25           the information, and the only thing that's going to



1           get him in trouble is if he lied. And then over on  
2           Page 9 they're again talking to him some more about  
3           the events of that night, and it's about the middle  
4           of the page the detective goes, okay, this is the  
5           really important part. We got you and Paul. Phong  
6           goes, yup. Went to Joe's house. Yeah. Okay. The  
7           detective, okay. I know for sure, and I got  
8           information corroborated by many other people that  
9           you guys were there for maybe half an hour to almost  
10          an hour. Phong: Yeah. The detective, Chong shows  
11          up. Okay. Right. Phong: Yup. Detective: And you  
12          guys went into the basement. Phong: Yeah.  
13          Detective: Chong told you what happened. Phong:  
14          Yeah. Detective: Just be honest. Okay. Phong:  
15          Yeah. Detective: I got that information already.  
16          Phong: Yeah. Detective: What did he say. Phong:  
17          He said he popped the guy. Most of that conversation  
18          is the detective just saying we have the information,  
19          this is what we know, and he's just -- the detective  
20          is telling the story and he's just saying yeah. And  
21          what we've seen -- what I've seen not only a couple  
22          times in this case but also in other cases is a lot  
23          of times these yeahs is just, okay, you got me, just  
24          tell me what you want me to say, I'm going to respond  
25          yes or I'm just listening to you and I'm responding,

1           yeah, I hear you, and going from there. So here is  
2           an example of what I would describe as the detective  
3           telling the story rather than the suspect relaying  
4           the information to them.

5       Q     Right. Now we're on the same time or sometime that  
6           afternoon, the police also went -- different  
7           detectives went and talked to Joe Thor again.

8                     Turning your attention to Exhibits 161 and 162,  
9           this is a -- one interview but there is a five-minute  
10          or four-minute break that occurs in the middle of it.

11    A     Okay.

12    Q     Okay. And that's Item No. 141.

13    A     Okay.

14    Q     All right. What do they tell Joe Thor in this  
15          interview that you find problematic?

16    A     Well, again, the first -- that they begin with on  
17          Line -- on Page 2 right about the middle they  
18          basically tell him that both Chong and Paul have  
19          talked to us and part of the reason that they're both  
20          in custody is they both talked. That could be  
21          inferring that they both confessed or they both told  
22          them what -- their variation. Then later on on Page  
23          10 they basically -- and up towards the upper third,  
24          they tell them, look, Joe -- they tell Joe, the  
25          detective goes, and now we know that he was not -- we

1 don't think he was the shooter. Joe goes, I didn't  
2 believe so far too because from what I saw --  
3 detective: Say, Joe, you got to help him out. Joe:  
4 I'm trying. I'm trying. Detective: Because, you  
5 know, remember I -- I said we thought Paul was the  
6 shooter. Joe: Yeah. If you really want to help him  
7 out you got to be up front with us and everything  
8 that Paul did so we can verify what he's telling us.  
9 Again, you know, this is the information that we're  
10 seeking in order to help Paul, your friend, there.

11 But the threats also continue like on Page 21  
12 towards the bottom of the page. Okay, Joe, we've  
13 just got done. I talked to the District Attorney's  
14 office. Joe says yes. This is a homicide case.  
15 Yes. Detective: She wants everybody, and Brian can  
16 verify, everybody responsible for this to be punished  
17 to the fullest extent of the law so I'm asking you  
18 for you to help yourself. So again, you know, you're  
19 going to be punished unless you help us but now the  
20 help is in order to go after Chong.

21 It's repeated on Page 27 in the middle where the  
22 detective says, I told you from the beginning I will  
23 absolve you of everything if you -- if you tell us  
24 exactly what happened after you left Luna, okay, with  
25 Paul.

1           A bit further down. You can get yourself on  
2           that witness line and off that 25-year to life  
3           line.

4     Q     All right. And then, finally, is there something  
5           mentioned about the needs of the police on Page 32  
6           regarding Paul that's suggested to Joe.

7     A     Is that on the -- yes. On Page 32 towards the bottom  
8           the detective goes, okay. Paul was initially -- he's  
9           arrested for shooting him, right. Joe: Paul was.

10           ATTORNEY VISHNY: One minute. Let me just  
11           show her.

12     A     Sure. I'm trying to talk quicker than I should.

13     Q     We're just going to continue. All right. Go ahead.

14     A     Okay. So Page 32. The detective, okay. Paul was  
15           initially -- is arrested for shooting him initially.  
16           Joe: Paul was. Detective: We need people to verify  
17           information of what Paul is telling us. Okay.  
18           Everything that Paul is telling us in order to  
19           remember to put him on the right side of the line.  
20           Joe: Yup. Detective: Because there's some people  
21           that put him on the wrong side of that line.

22     Q     Okay. And do they say something next as that goes  
23           on?

24     A     I'm sorry. I -- like I said, I thought I was -- I  
25           think I'm going a little too quickly. I need to slow

1 down a little bit.

2 Joe: Oh, I see. Detective: Now Paul is  
3 telling us that Chong shot the guy Josh. So that's  
4 what they need help in getting from Joe to help  
5 corroborate that.

6 Q All right. Moving on to Exhibit 162, which is Item  
7 142, so this is the part of that interrogation that  
8 occurs after the break. Are there comments -- are  
9 there again these kind of threats made by the  
10 detectives that concern you that can lead to a false  
11 statement?

12 A Yes. Again, they continue. It's on Page 4 of my  
13 transcript where the detective is going, what you  
14 need to be afraid of, and what you will get arrested  
15 for, is covering things up and lying to us. Okay?  
16 If you took steps, and we're giving you a green light  
17 pass here today. Joe: Okay. But this is it. And  
18 if we find out after today that you've covered up  
19 evidence or you've helped hide evidence or you've  
20 lied to us, we will be your worst nightmare. I will  
21 make it my project to see that you're in the county  
22 jail. Further down the detective goes, because we're  
23 not messing around and it's going to be party to the  
24 crime of first-degree intentional homicide. A little  
25 bit further down the detective goes, now I don't want

1 to scare you from telling me -- I don't want to scare  
2 you from telling the truth but I want you to  
3 understand that this is it.

4 Q And then does he say this is the final period where  
5 you have a green light pass?

6 A This is the final period where you have the green  
7 light pass.

8 Q All right. And then Joe starts to give more  
9 information?

10 A Joe starts to give more information.

11 Q Now, is there anything else in particular -- is there  
12 -- do you recall there is some discussion about  
13 Sharks and bullets?

14 A Yes.

15 Q And how does that unfold?

16 A Well, there's a discussion about Sharks itself, and  
17 it's on Page 6, goes into Page 7. The detective  
18 goes, okay, what did you do with the gun. And I know  
19 we talked about this. Joe goes, well he said he  
20 flushed it somewhere. I don't know where though. He  
21 said, maybe he said a bar downtown so I don't know  
22 where. The detective, he flushed it in a bar  
23 downtown. Joe: That's what he said to me so.  
24 Detective: Like he flushed it down a toilet. Guns  
25 don't flush down a toilet. Joe: Well that's what he

1           said to me but. Detective: The terminology was he  
2           said he flushed it down the toilet and then it -- Joe  
3           goes, well that's what kind of comes to my mind. The  
4           detective goes, well they -- they went through  
5           Sharks. Joe goes, who. The detective, after. Joe  
6           goes, who did. Detective: Not you. Did he talk to  
7           you about going through Sharks. So that's the first  
8           time that Sharks came up in that conversation. And  
9           Joe just goes, well, yeah, he said he went down there  
10          and that he -- and the detective interrupts him  
11          rather than let him finish, goes, right after the  
12          shooting. And then Joe agrees with him, yup, and  
13          then he left. Detective: Okay. Then did he ditch  
14          it down at Sharks. Joe: Possibly that -- he's cut  
15          off again. Detective: Well help yourself, Joe.  
16          Joe: He said he -- he said he threw it down the  
17          toilet and flushed it. And the detective, at Sharks.  
18          Joe: Yes. I believe so. And the detective goes,  
19          well, okay. Yes or no. One or the other. That was  
20          my add-on there. Joe goes, yes. Detective: Did he  
21          say. Joe: He said Sharks. And the detective says,  
22          okay. Okay. Tell me exactly what he said about the  
23          gun at Sharks. He said it flushed down the toilet.  
24                 And what I was trying to point out is how that  
25          conversation developed, how Sharks was added by the

1 detective, and Joe, when he wavered said possibly.  
2 They forced the issue until he came to that final  
3 statement right there.

4 Q All right. And finally, regarding that statement, on  
5 Page 17 is there the referral in that discussion to  
6 some past contamination that has occurred regarding  
7 the gun? Turning to Page 17 -- well, for me it's  
8 Line 35 but --

9 ATTORNEY SCHNEIDER: We'll find it. For  
10 you it's near the bottom quarter of the page or so.

11 A Well, the detective, at this point it looks like he's  
12 trying to get corroboration of -- he's trying to get  
13 information that he could use for corroboration, and  
14 he goes, Joe, big question for you. Joe goes, yes.  
15 The detective, what kind of gun did he say it was.  
16 Joe: He did not say what. Well, you guys told me it  
17 was a .22, right? And the detective goes, okay. I'm  
18 not going to be able to repeat that. So, you know,  
19 the detective realized that he could not get that  
20 corroboration because he already had been told the  
21 information beforehand so that anything that he  
22 talked about the gun was pretty much useless at that  
23 point.

24 Q All right. And continuing on the next page, does Joe  
25 say that Chong didn't say what kind of gun it was and



1 does Joe express a belief of why it's a .22?

2 A Yes. Again at the top of the page, Joe, he did not  
3 say what kind of gun it was. Joe: But I believe it  
4 was a .22 from what you guys told me. He then asked,  
5 did -- do you know what a semi-automatic is. Well  
6 kind of. A revolver. No. I don't know the  
7 difference.

8 Q All right. One more, and this is the last one. I'm  
9 going to ask you about Tou Shoua Lee's interview that  
10 took place on December 18th which we have at Exhibit  
11 No. 106, and that's APD Item No. 177. All right?

12 We're not going to read the whole interview, and  
13 I will tell you that a large part of this was read to  
14 the jury early in this case when Tou Shoua Lee  
15 testified. So what happens in this particular  
16 interrogation of Tou Shoua Lee?

17 A Basically there isn't so much threats here as  
18 suggesting of what the narrative should be through,  
19 you know, contamination, them kind of scripting, just  
20 like the examples I had given before where they're  
21 suggesting possible answers to their questions where  
22 the conversation may want to go, things along that  
23 type. Kind of shaping his memory of the events.

24 Q Are there any very specific examples you would like  
25 to give?

1     A     Trying to find the best one.

2     Q     Let me ask you this. Is it fair to say that pretty  
3           much the whole interview goes like that so it's hard  
4           to just pick up one?

5     A     Pretty much the whole -- it's like on Page 22 where  
6           they say, okay, so obviously the person that we're  
7           talking about is Chong. He says, yeah, he came from  
8           the dance floor. But they keep saying, yeah, but he  
9           wasn't there, he wasn't there initially. Okay. And  
10          you saw him walking from the bar area. Lee: I just  
11          see him, like I didn't know that he was a gunman, I  
12          didn't know he was a shooter, I just don't know. He  
13          keeps saying that there could have been anybody there  
14          who was the shooter, and they kept bringing about  
15          Chong. Line 29, so the three of them that -- Page  
16          29, so the three of them that walked past you, you're  
17          saying that it most likely will be Chong. He goes,  
18          could have been Chong, could have been Michael, I  
19          don't know. Detective: Okay. I have no idea who it  
20          was at the time. Lee: It could have been anybody  
21          there.

22                 Like I said, they keep suggesting Chong's name  
23                 throughout this, even though he insists that he just  
24                 didn't know.

25     Q     Now, earlier before we started getting the specifics

1 of the case you mentioned what they call the PEACE  
2 method in the UK. That's a different method of  
3 interviewing and interrogation. Can you just briefly  
4 tell -- explain what that means to the jurors, that  
5 methodology?

6 A Well, like I said, the term PEACE is not the name of  
7 it, just an acronym of the investigative  
8 interviewing, and what it is, it's designed to obtain  
9 as much information from the suspect as possible with  
10 a minimum amount of contamination. Detectives are  
11 given extensive training in the right questions to  
12 ask in order to avoid things like leading questions,  
13 and they're given a lot of practice on how to do this  
14 as well. And just very, very quickly, what they do  
15 is they first know everything they know about the  
16 case and they ask the suspect to provide their  
17 account. They then listen to the suspect's account,  
18 they repeat it back to them, and then they'll ask  
19 something like, okay, you say that you drove home  
20 that night. Please tell me the route that you drove.  
21 They'll explore that in intimate detail, and then  
22 they'll go to another point. By the time they're  
23 finished, they have a ton of information, the suspect  
24 is locked into all of this stuff, be it an alibi or  
25 whatever, and then at that point they're allowed to

1 challenge the suspect. They don't give up their  
2 information up front, they're -- because the suspect  
3 may have an explanation for it. They explore all the  
4 possible explanations that might be present for that  
5 evidence, and then they say, well, we -- you say that  
6 you drove him on this route but we would like for you  
7 to explain why CCTV caught your car over on this  
8 route at this time. And they're not yelling, they're  
9 not screaming, they're not accusing him, they're not  
10 saying that you're lying, they're just asking him to  
11 provide an account, and they do it in such a way  
12 that, like I said, the person's locked in, they now  
13 to have explain. If they can't explain then there is  
14 a saying in the police work that an alibi can be as  
15 good as the -- that a blown alibi can be as good as a  
16 confession. So -- and what they end up getting is a  
17 lot of information that they can then go out and  
18 check. Because if you tell me that you took this  
19 route home, I can go back and check red light  
20 cameras, I can check gas receipts, I can do all this  
21 other kind of stuff rather than spend all my time  
22 trying to get somebody to admit it and not much more  
23 information than that.

24 Q Isn't that what the police did here when they took  
25 the versions from witnesses and then they would, you

1 know, the witnesses would say, well, I wasn't there,  
2 and they would say to them, look, we have you on  
3 video, we have you walking out of the bar, or they  
4 would show them their photographs?

5 A Well, they did do that, but the questions that they  
6 asked were so leading and contained so much  
7 information about the case and kind of gave major  
8 hints as to the direction that they thought the  
9 narrative should go, that they were actually giving  
10 out more information at one point than they were  
11 getting back from the suspect. So that's not  
12 investigative interview, that's -- that's not seeking  
13 information, that's seeking confirmation.

14 ATTORNEY VISHNY: Your Honor, at this time  
15 that's the last question I have if you want to take a  
16 break.

17 THE COURT: Thank you. Why don't we -- as  
18 close as we're going to get to a break time. Why  
19 don't we give the jury ten minutes.

20 All rise. And then I'll expect that we'll  
21 commence at around four p.m.

22 (The jury was escorted out of the  
23 courtroom.)

24 THE COURT: Okay. We'll be in recess for  
25 about ten minutes.

1 (Court in recess.)

2 THE COURT: Please rise for the jury.

3 (The jury was escorted into the courtroom.)

4 THE COURT: Please be seated.

5 Attorney Schneider, whenever you're ready.

6 **EXAMINATION OF JAMES L. TRAINUM**

7 **BY ATTORNEY SCHNEIDER:**

8 Q Mr. Trainum, when were you hired to review this  
9 case?

10 A I was first approached probably I think it was last  
11 spring, last spring, first part of summer. I don't  
12 quite remember when.

13 Q And then after that point it was the defense that  
14 sent you materials to review?

15 A Yes, ma'am.

16 Q And I just want to clarify something, you're -- when  
17 you talked about how many cases you worked, you said  
18 you'd been an officer I think for 27 years, right?

19 A That's correct.

20 Q And 17 years as an investigator?

21 A Correct.

22 Q And not everybody knows the size of D.C. but you said  
23 you did 50 homicide interrogations and about a  
24 hundred other interrogations?

25 A Like I kind of mentioned before, it -- if you do the

1 math, because I know that a lot of detectives will  
2 talk about doing hundreds and hundreds of  
3 interrogations, just don't interrogate that many  
4 suspects. And especially if you work homicides.  
5 Homicide you may work -- in a busy department you may  
6 work five to ten per year, but what you typically do  
7 is end up interrogating more witnesses using the same  
8 tactics of course that you do with a suspect.

9 Q And you've talked -- Attorney Vishny asked you,  
10 you'll go teach here, go teach there. You're often  
11 paid to go teach at different places, correct?

12 A No.

13 Q You do it all pro bono?

14 A I've only been paid once. Other than that,  
15 everything is pro bono, especially if it's law  
16 enforcement that asks me. They'll pay for expenses,  
17 but other than that it's all pro bono.

18 Q And the Reid technique, it is not mandated by statute  
19 in Wisconsin?

20 A I do not know that it is.

21 Q It's probably not mandated by any state in the United  
22 States, correct?

23 A That's correct.

24 Q It's an approach.

25 A It is the interrogation technique that is primarily

1           used in the US, that's correct.

2       Q     It's a guide, correct?

3       A     They don't teach it as a guide.

4       Q     Okay. But there is no requirement to be an officer  
5           in the State of Wisconsin that you have Reid  
6           technique training, is there?

7       A     Not that I know of.

8       Q     And you talked about admissible items or admissible  
9           testimony in this. Everything a jury hears during  
10          the course of the trial, unless it's objected to or  
11          stricken, is admissible, correct?

12      A     And like I mentioned, there is a difference between  
13          what's admissible, what's reliable, and what's  
14          accurate, but, yes, everything that comes before the  
15          jury has been ruled admissible by the judge.

16      Q     Okay. And you've reviewed the reports prepared by or  
17          since sent to you by the defense, correct?

18      A     Yes.

19      Q     Did you ever make contact with anyone in the Appleton  
20          Police Department?

21                   ATTORNEY VISHNY: I just want to object.

22          The reports are prepared by the police.

23      Q     Reports sent to you by the defense.

24      A     That's correct.

25      Q     You never made contact with anyone from the Appleton



1 Police Department to talk to them, did you?

2 A I did not.

3 Q You could have?

4 A I could have.

5 Q Never met with any of the individuals who gave the  
6 statements in this case?

7 A That's correct.

8 Q And obviously you weren't here, I mean there's been a  
9 lot of people in and out of the courtroom, but you  
10 weren't here until today, correct?

11 A I was not in this courtroom until today, that's  
12 correct.

13 Q So you weren't able to observe any of the people when  
14 they came in to testify?

15 A That's correct.

16 Q And you -- when you talked about these Reid  
17 techniques or the different techniques that you would  
18 say -- maybe you would say they're not proper, your  
19 position is that they may lead to false confessions,  
20 correct?

21 A That they -- yes, I think that -- what I was saying  
22 is that the position of Reid and the researchers is  
23 that they increase the possibility of false  
24 statements.

25 Q Okay. What percentage? You talked about all this

1 research, what percentage of cases using the Reid  
2 technique results in a false statement?

3 A That's the problem. We really don't know because  
4 there's no master database out there of how many  
5 interrogations are done, there's no master database  
6 of how many of those result in false statements, and  
7 so there's really no baseline per se. We do have an  
8 idea of how many false confessions have occurred --  
9 confirmed false confessions have occurred in  
10 confirmed wrongful conviction cases.

11 Q And there is no false confession in this case,  
12 correct?

13 A I'm not saying there is -- what's false and what  
14 isn't false, of course, is totally up to the jury.

15 Q A false confession. There is no false confession in  
16 this case, correct, Mr. Trainum?

17 A That's correct.

18 Q Okay. In your experience with homicides, if people  
19 hear a gunshot, do some people run?

20 A Yes.

21 Q Do people run who have no involvement in the case?

22 A I have seen that, yes.

23 Q Because they're scared?

24 A I have had that as an explanation, yes.

25 Q Sometimes even a lesser offense, not a homicide, you

1 know, a theft from a store or they see a fight out,  
2 some people just don't want to be involved; isn't  
3 that correct, Mr. Trainum?

4 A That's correct.

5 Q They don't want to have to come into court to  
6 testify?

7 A That's correct.

8 Q Some people don't want to have to talk about what  
9 then saw their friends do, correct?

10 A That's correct.

11 Q Or what they saw a family member do?

12 A That's correct.

13 Q Would you agree with me that most people don't joke  
14 about committing or shooting someone? That was a bad  
15 word in there. Would you agree with me that most  
16 people don't joke about shooting someone?

17 A Joke how? I don't understand.

18 Q Like I tell Mr. Maier, hey, last Saturday night I was  
19 out downtown and I shot a guy?

20 ATTORNEY VISHNY: Judge, I'd like to  
21 approach the bench.

22 THE COURT: You may.

23 (Bench conference.)

24 ATTORNEY SCHNEIDER: And I'm just going to  
25 ask the court reporter to read the question back.

1 Thank you.

2 (Question read back.)

3 Q (BY ATTORNEY SCHNEIDER) Do you think most people  
4 joke about that?

5 A Not in my circle.

6 Q And in your investigations?

7 A I've had people joke. It depends -- yes, I've had  
8 cases where people have made light of it for various  
9 reasons. Yes.

10 Q Were those people actually involved in the offense?

11 A Some were and some weren't.

12 Q So do you believe if someone, you know, someone was  
13 at a scene because of something you have and you go  
14 to talk to that person and you say, hey, I want to  
15 talk to you about being at this spot, and they say I  
16 wasn't there, okay, so you don't -- do you think that  
17 officer should probe into that?

18 A Yes, of course.

19 Q Do you think they should confront a person if they're  
20 lying?

21 A Appropriately, yes.

22 Q So it's not appropriate -- if someone denies  
23 something eight times can they continue to ask that  
24 person if they've been there?

25 A If they do it in such a way that doesn't involve the

1           problematic techniques that I talked about or  
2           involves contamination, it's quite appropriate.

3       Q     You've dealt with probably people on the spectrum,  
4           and that I mean you've probably dealt with people who  
5           have had low cognitive functioning to people who were  
6           professionals in corporations.

7       A     Yes.

8       Q     And you've had to interview all those types of  
9           people.

10      A     Yes.

11      Q     And you probably interviewed people who have gone  
12           from wanting to be willing and tell you what they  
13           knew to absolutely not wanting to talk about what  
14           they knew.

15      A     Absolutely.

16      Q     And would you agree with me that because there's such  
17           a broad spectrum of people you can't take the same  
18           approach with every person?

19      A     That's correct. You can't take the same approach,  
20           but there are certain approaches that you shouldn't  
21           take period.

22      Q     Your position on this is that these were problematic  
23           and that sometimes these problematic approaches may  
24           lead to false statements.

25      A     That's exactly right.

1 Q Not that they do lead to false statements in every  
2 case.

3 A Which is why I talked about the second step which is  
4 corroboration of the evidence. You don't take it at  
5 face value, you need to test it, be it from a  
6 cooperative witness who voluntarily gives you that  
7 information or one that you get it from other  
8 means.

9 Q In this case were you ever seen or shown any photos  
10 relevant to a jacket?

11 A Yes.

12 Q What do you remember about that?

13 A It was a -- I believe, I think it was a lighter  
14 jacket with darker sleeves and some stripes around  
15 the wrist.

16 Q And where did you see that from?

17 A That was a photograph that I was sent.

18 Q When?

19 A I don't remember exactly when.

20 Q Was it the first packet you got or a packet you just  
21 recently received?

22 A It was a later package, but I think it was -- I don't  
23 remember how recently.

24 Q Okay. Did you ever see any video from the Hilton  
25 hotel in Milwaukee?

1 A No, I did not.

2 Q Okay. So if officers had gone down and obtained  
3 video of Mr. Lee checking into the Hilton hotel  
4 Sunday morning at 6:43 a.m. the morning of the  
5 shooting and some other people had said we went down  
6 to Milwaukee, that would be a piece of evidence that  
7 corroborates someone's statement, correct?

8 A It depends on what the statement was of course, but  
9 yes, that -- that could be. Videotape like that  
10 could be a piece of corroboration.

11 Q Or like a receipt from the hotel to verify where he  
12 had been?

13 A Yes, that could be a piece of corroboration.

14 Q Or a receipt from a JJ Fish & Chicken restaurant in  
15 Milwaukee?

16 A That's correct.

17 Q Did you see any of those items?

18 A No.

19 Q I'm going to assume that in Washington D.C. you have  
20 a tip line for individuals, correct?

21 A That's correct.

22 Q And had that probably during most of your career?

23 A All my career, that's correct.

24 Q Are you aware of tips that also were received in this  
25 case?

1 A No, I was not.

2 Q So if officers had gotten tips on this case on  
3 December 11th, that's not something you're aware  
4 of?

5 A That's correct.

6 Q But if they had gotten tips that said Chong might be  
7 involved --

8 ATTORNEY VISHNY: I object to that. That's  
9 hearsay.

10 ATTORNEY SCHNEIDER: I can't ask him the  
11 question tomorrow, I guess.

12 ATTORNEY VISHNY: Can we approach the  
13 bench?

14 THE COURT: Approach.

15 (Bench conference.)

16 Q (BY ATTORNEY SCHNEIDER) As part of this case, Mr.  
17 Trainum, recently you were given jail phone calls to  
18 review, correct?

19 A That's correct.

20 Q Did Washington D.C. have a system where when a person  
21 was in custody their jail phone calls were  
22 recorded?

23 A Yes, towards the second half of my homicide career.

24 Q I was gonna say, we haven't always had that.

25 A No, we have not.



1 Q And is it a similar practice in Washington D.C. where  
2 at the start of those calls it's this call is  
3 recorded and monitored?

4 A Yes.

5 Q Is it a situation -- our old system about every five  
6 minutes a voice would come in and say this call is  
7 being recorded and monitored. Was that the system  
8 you had in D.C.

9 A Not in D.C., I don't believe.

10 Q Okay. But you've reviewed those jail phone calls?

11 A I went through them, that's correct.

12 Q And letters written by the defendant?

13 A The ones that were given to me, yes.

14 Q And you're aware, Mr. Trainum, the charges in this  
15 case aren't just the homicide charges, correct?

16 A That's correct.

17 Q There's charges for intimidation of witnesses and  
18 solicitation of perjury?

19 A Yes.

20 Q I just want to talk a little about Paul Lee's written  
21 statement. You said in your testimony that you  
22 thought when Sergeant Schira went through, prior to  
23 him making his written statement, some facts or  
24 details, what was your issue or concern with that?

25 A The fact that he suggested from the transcript that

1           he include in there -- included in there that Chong  
2           shot the victim, when there was nothing that I saw in  
3           the transcript where Paul said that he saw Chong  
4           shoot the victim or anything along that line. I  
5           think that it was -- it sounded to me like a  
6           misrepresentation of the information that he had.

7       Q     Well, if I tell you I shot the Grinch, I think I  
8           referenced the Grinch at some point, I shot the  
9           Grinch, okay, from the movie, and then we're at --  
10          you were there when it happened, you think it's --  
11          would be improper for you to say Carrie shot the  
12          Grinch in that statement?

13      A     I think what was improper is the way that he had it  
14          phrased is that I was involved in -- if I remember  
15          off the top of my head, I was involved -- he asked  
16          him to write, I was involved in a fight, Chong shot  
17          the victim. And that sounds like that happened all  
18          at once, that was the way that he remembered it. I  
19          think it would have been more appropriate to have him  
20          write it in his own words without it being suggested  
21          to him how he phrase it.

22      Q     So when it got physical, Chong came from Josh's left  
23          side and point blanked Josh. That's what you had  
24          issue at?

25      A     Yes.

1 Q If I would tell you there is references within the  
2 transcripts to him talking about Paul coming from the  
3 bar, would you agree with -- or Chong coming from the  
4 bar prior to shooting would you agree with me?

5 A Well, I was thinking about that, and I believe like  
6 the point blank contact wound and all that, that  
7 first came up from the detectives.

8 Q Do you have your -- do you have --

9 ATTORNEY SCHNEIDER: Do you want me to have  
10 him use the exhibit or his notes?

11 ATTORNEY VISHNY: Well, he's got his notes  
12 up there.

13 Q (BY ATTORNEY SCHNEIDER) Okay. So do you have the  
14 11:58 Paul Lee transcript at Appleton PD? I'll give  
15 you time to get there. You gave us time to catch up  
16 too.

17 A 11:58?

18 Q Yes. Page 11.

19 A I have Page 11.

20 Q Okay. So the top of that they're asking about the  
21 jacket?

22 A This is the 11:58 a.m.?

23 Q Yes.

24 A Page 11?

25 Q Yes.

1 A Possibly he threw it in a dumpster somewhere, yes.

2 Q Okay. So you're with me. Then they ask him if there  
3 is blood splatter, right?

4 A Right.

5 Q And then the -- Paul's answer says, maybe, I don't  
6 know?

7 A Right.

8 Q The officer says, okay. Correct?

9 A Yes.

10 Q And then Paul says, he did say he point blanked him.

11 A That's correct.

12 Q Okay. And during Phong's interview, his first  
13 interview, he talked about how he didn't want to be a  
14 snitch, right?

15 A Did he bring that up or did they bring that up?

16 Q He talked about it, right?

17 A It was discussed.

18 Q Have you ever heard the phrase snitches get  
19 stitches?

20 ATTORNEY VISHNY: I object to that, think  
21 we've been down this road before.

22 ATTORNEY SCHNEIDER: It was a comment made  
23 during the course of this trial.

24 ATTORNEY VISHNY: By Mr. Maier.

25 THE COURT: Counsel, approach.

1 (Bench conference.)

2 Q (BY ATTORNEY SCHNEIDER) We're going to flip to Phong  
3 interview.

4 A Okay.

5 Q So Phong --

6 ATTORNEY VISHNY: What page?

7 THE COURT: 27 is the first reference.

8 ATTORNEY VISHNY: Page 27 of what exhibit  
9 number?

10 ATTORNEY SCHNEIDER: Item 43.

11 Q Line 23. Do you see that?

12 A I don't have lines. What does it start with, if you  
13 would, please.

14 Q The first word is dude.

15 A Okay.

16 Q So Phong says, during the course of that interview,  
17 dude, I'm not -- I'm snitching. Right?

18 A I'm snitching. Okay.

19 Q And then can you --

20 A Well, he says on that page, like I said, I haven't  
21 gone back and looked at the others, but he does say  
22 that on Line -- on Page 27.

23 Q So why don't we switch to Page 33. I'm going to  
24 direct you to Line 32. He says -- Phong says during  
25 the course of that, you a snitch, you gonna -- you

1           gonna to get it. A snitch gonna to get it like fast  
2           as hell. Right?

3     A     Yes.

4     Q     So he expressed some concerns to the officers during  
5           that interview.

6     A     Apparently, yes.

7     Q     And Joe Thor, during his interview on the 9th and on  
8           the 10th, even when the officers were pushing him  
9           about you got to tell us this, we saw him and he had  
10          this item in his hand, he never said Paul was the  
11          shooter, right?

12    A     No, he did not.

13    Q     And in fact he said Paul was not the shooter.

14    A     Yes.

15    Q     It was not Paul, it was not Phong?

16    A     Yes.

17    Q     And during the first interview of Paul at Appleton  
18          Police Department, even when they're saying, you  
19          know, we think it's you, you got this item in your  
20          hand, Paul does not say he was a shooter, correct?

21    A     That's correct.

22    Q     Have you ever had cases, Mr. Trainum, where a family  
23          member has been hesitant about talking about what  
24          another family member did?

25    A     Absolutely, yes.

1 Q You don't speak Hmong, do you?

2 A No.

3 Q So if there were references within any of the  
4 transcripts like the Appleton Police Department that  
5 were in Hmong, you don't know what they said?

6 A Just based on the transcript itself.

7 Q Okay.

8 A The translation, I should say, of the transcript.

9 Q And you're familiar with the form Monday morning  
10 quarterbacking, right?

11 A Yes.

12 ATTORNEY SCHNEIDER: Nothing further.

13 THE COURT: Attorney Vishny, any follow-up  
14 examination of this?

15 **EXAMINATION OF JAMES L. TRAINUM**

16 **BY ATTORNEY VISHNY:**

17 Q Are you Monday morning quarterbacking in this case?

18 A No, I'm not.

19 Q What are you doing when you tell us what your  
20 expertise is when you analyze the interrogation  
21 techniques used here?

22 A Basically I'm trying to offer information as to what  
23 is basically accepted practices and problem -- what  
24 have been identified as problematic practices and  
25 explain the tools that law enforcement is supposed to

1 use in order to corroborate the reliability and the  
2 accuracy of confession evidence.

3 Q And are the opinions that you've offered based not  
4 only on your own personal opinion but extensive  
5 research in the area of false statements?

6 A Yes.

7 Q And finally, what I want to ask, since this issue has  
8 come up, is what does constitute independent  
9 corroboration that can be done in a case such as this  
10 after a lot of witness statements are obtained?

11 A One, I like to create time lines of the events, not  
12 only the events but also the witness statements  
13 themselves. It's interesting -- actually, one of --  
14 this was taught to me by one of the people who used  
15 to work for Reid is that if you have witness  
16 statements that change over time, it's interesting to  
17 see what might have influenced those changes, and so  
18 you're looking for the type of interrogation  
19 practices and contamination that might have  
20 influenced those changes. Other things that you can  
21 look for is they talk about phone records, you pull  
22 phone records. If they talk about routes that they  
23 drove or they walk, you go out and you find  
24 videotapes, like they were talking about before,  
25 receipts, things along that line. That's the type of



1           stuff you're looking for. If you're telling me this  
2           is what happened, how can I go about proving where  
3           you were at that time. That sort of thing. And then  
4           you go out there and you try to do it.

5           I -- I've done crime scene reconstructions  
6           before, and they've often -- by having an independent  
7           person come in and trying to re -- recreate the crime  
8           scene or a situation, that sometimes helps to  
9           corroborate a situation.

10        Q    I'm just going to ask you really quickly about phone  
11           records. Is checking phone records to see if there  
12           were calls between phone numbers that are known to be  
13           certain individual's cell phone, is that a good way  
14           to corroborate whether or not people have spoken to  
15           each other in a certain time period?

16        A    Yes. In fact, the last part of my career that's a  
17           heck of a lot of what we did.

18        Q    And now it's fair to say, of course, it doesn't mean  
19           you're proving who is on the phone because you're not  
20           there taping the conversation, I mean somebody could  
21           pick up somebody else's phone, right?

22        A    That's correct.

23        Q    Okay. But it -- even though that can occur, why is  
24           this a valuable tool?

25        A    Well, I mean, if I say that I made three phone calls

1           this afternoon, and there's three phone calls that  
2           are listed from the number that I say that I called  
3           to another number, what it shows is that three phone  
4           calls were made from that number, but it does back up  
5           what I'm saying. There is independent proof that  
6           what I'm saying is true.

7       Q     And can there also be a -- if a witness claims, gee,  
8           I haven't talked to somebody for several months, can  
9           one also make use of checking their phone records to  
10          see whether or not there have been calls between that  
11          witness's telephone and the person who they claim  
12          they've never spoken to?

13      A     Yes. But of course you have to take into account  
14          that that only shows phone call communication. It  
15          doesn't show all communication. So even physical  
16          evidence of that nature is limited, you have to  
17          recognize it for what it is, but yes, if somebody is  
18          saying, no, I haven't had any conversations with them  
19          and there is no phone traffic, you would also, during  
20          your conversation with him, during your interview,  
21          what I'm talking about is getting information, okay,  
22          you say that you haven't talked to him in a month.  
23          Does that mean that you haven't met with him in  
24          person, does that mean that you haven't talked to him  
25          on the phone, you would eliminate all those

1           possibilities, and then you would check the phone  
2           records or whatever means you had to corroborate  
3           that.

4                       ATTORNEY VISHNY: Nothing further.

5                       THE COURT: Attorney Schneider.

6                       **EXAMINATION OF JAMES L. TRAINUM**

7           **BY ATTORNEY SCHNEIDER:**

8       Q     All phone records really do is tell us this phone  
9           number called another phone number, right, we can  
10          never put anybody behind the phone at the time unless  
11          you're sitting with them.

12      A     Or unless you have some other sort of documentation  
13          like a video with them on the phone or whatever like  
14          that. Generally, that's correct.

15      Q     And family members probably sometimes call each other  
16          quite a bit.

17      A     Depends on the family member. Sure.

18      Q     And you've -- you reviewed search warrants in this  
19          case?

20      A     No.

21      Q     Okay. So would you know that even Joe Thor did not  
22          have a cell phone but his brother Cassidy did and law  
23          enforcement took that phone from him on December  
24          12th?

25      A     Excuse me. I'll correct myself. I remember phones

1           being seized, I remember a spreadsheet of search  
2           warrants, and some were and some were not -- the  
3           information apparently on some was received from the  
4           phone company and some was not received from the  
5           phone company.

6       Q     Okay. And are you aware on December 12th, 2013, Paul  
7           Lee was at the Appleton Police Department, I think  
8           we've agreed, and got dropped off at about 1:17 p.m.  
9           Okay? Were you aware of that? You talked about time  
10          lines.

11      A     I don't -- I'm not specifically aware of that time  
12           off the top of my head. If I went back and looked at  
13           the reports, it would probably be in there.

14      Q     Do you know what time officers started speaking to  
15           Joe Thor on that same day?

16      A     I do not know off the top of my head.

17                   ATTORNEY SCHNEIDER: Okay. Nothing  
18           further.

19                   THE COURT: Attorney Vishny?

20                   ATTORNEY VISHNY: Nothing.

21                   THE COURT: Ladies and gentlemen of the  
22           jury, any questions for consideration?

23                   Attorneys please approach.

24                   (Bench conference.)

25                   THE COURT: Any other questions?

1 ATTORNEY SCHNEIDER: No, I don't have any  
2 other questions of Mr. Trainum. Thank you.

3 THE COURT: Thank you, sir. And you may be  
4 excused.

5 THE WITNESS: Oh, thank you.

6 THE COURT: And then the -- we'd go back to  
7 now our original batting order, and so the State, it  
8 is now your case again.

9 Mr. Maier, you have another witness, sir?

10 ATTORNEY MAIER: We do. Your Honor, the  
11 State calls Teng Lee.

12 THE COURT: Very good.

13 THE CLERK: Please raise your right hand.  
14 (Oath administered to witness.)

15 THE WITNESS: Yes, I do.

16 THE COURT: Please state your full name and  
17 spell it for the record please.

18 THE WITNESS: Teng Lee, T-E-N-G, last name  
19 Lee, L-E-E.

20 THE COURT: Okay. Mr. Lee, you may be  
21 seated. And then I would ask -- well, we do have a  
22 new bottle of water for you if need be. And then  
23 additionally, once you're seated I'd ask that you  
24 adjust the microphone so that you're able to be heard  
25 by everyone.

1 THE WITNESS: Okay.

2 THE COURT: Thank you, sir.

3 And then, Mr. Maier, you'll be questioning; is  
4 that correct?

5 ATTORNEY MAIER: I am, Your Honor.

6 **EXAMINATION OF TENG LEE**

7 **BY ATTORNEY MAIER:**

8 Q Good afternoon, Mr. Lee.

9 A Good afternoon.

10 Q Mr. Lee, do you know Chong Lee?

11 A Yes, I do.

12 Q And how long have you known Chong?

13 A Since I was a child.

14 Q He's the defendant seated in court today?

15 A Yes.

16 Q Do you have any brothers?

17 A Yes, I do.

18 Q Is one of them named Phong?

19 A Yes.

20 Q I'm going to ask if you know some people, and I'd  
21 like you to just say yes or no, depending on whether  
22 you know that. Okay?

23 A Okay.

24 Q Joe Thor?

25 A Yes.

1 Q Paul Lee?

2 A Yes.

3 Q Alyson Blom?

4 A Yes.

5 Q You may know her as Alyson Kristy; is that correct?

6 A I believe so, yeah.

7 Q Do you know a Hu Lee?

8 A Yes.

9 Q And a Lisa Stutzman?

10 A Yes.

11 Q If you had a nickname, what would it be?

12 A Big T.

13 Q Or maybe T?

14 A T, yeah, T for short.

15 Q Okay. I want to ask you some questions about a time  
16 in December of 2013, specifically it would be after  
17 the police arrested the defendant. Do you recall  
18 roughly that time period?

19 A No.

20 Q Okay. After the defendant was arrested, though, he  
21 called you on the phone, correct?

22 A Yes.

23 Q And he would have called you from the Outagamie  
24 County Jail?

25 A Yes.

1 Q Mr. Lee, I'm showing you what has been marked as  
2 Exhibit 170. Do you see the sticker by my number  
3 there?

4 A Yup.

5 Q Okay. Now, what I'm showing you, you have not seen  
6 before, correct?

7 A No.

8 Q This is a transcript of a jail phone call placed from  
9 the Outagamie County Jail on a date and a time. Do  
10 you see that?

11 A Yes.

12 Q And to a number, correct?

13 A Yes.

14 Q What is the date and time that the call was placed?

15 A 12/18/2013 at 12:55 p.m.

16 Q All right. Thank you. And the phone number that was  
17 called was 920 --

18 A 574-6656.

19 Q Is that a number that has some meaning to you?

20 A Yes.

21 Q Whose number is that?

22 A I believe it was mine at that time.

23 Q All right. What I'm going to do is --

24 ATTORNEY SCHNEIDER: And actually, Your  
25 Honor, I think the lights at this point would be



1 helpful.

2 Q (BY ATTORNEY MAIER) Mr. Lee, are you able to read  
3 that on the screen right now?

4 A Yes.

5 Q Okay. Now, there's some lines that say Chong Lee and  
6 some lines that say Teng Lee. When you spoke with  
7 the defendant when he was in the jail, did you speak  
8 only in English or in some other language also?

9 A We speak another language too.

10 Q What other language would you have spoken?

11 A Hmong.

12 Q So realizing that what was said may have been in  
13 Hmong, it's been translated and we've agreed that at  
14 least to a reasonable degree the translation is as  
15 accurate as we can get it to be.

16 What I'd ask you to do is direct your attention  
17 to the screen which reflects a portion of Exhibit  
18 170, a portion of a conversation between you and the  
19 defendant.

20 Chong Lee says, uh, Joe's working for the  
21 police. How do you reply to that?

22 A For real.

23 Q Chong Lee then says, yes, Joe told me. You reply?

24 A What about Paul.

25 Q Chong says, those two, Paul and Joe. You say?

1 A For real.

2 Q Chong says, yes.

3 Mr. Lee, the next one has been marked as Exhibit  
4 171. Do you see that mark there?

5 A Yes.

6 Q And this is another transcript of a jail call. Could  
7 you describe to the jury what the date and time of  
8 this call was please?

9 A 12/28/2013 at 9:36 a.m.

10 Q And it says call to 920 --

11 A 574-6646.

12 Q And you testified just now that was your number at  
13 the time, right?

14 A Right.

15 Q Thank you. And again I'll display it on the screen.  
16 You don't have any independent recollection of this  
17 phone call?

18 A I can't recall.

19 Q Okay. Now in this one, and I've left part of one  
20 column visible so that we can see that part of this  
21 call is in English and part of this is in Hmong, do  
22 you sort of see where that works there, where if it's  
23 no box it's in English and if there's a box with two  
24 columns it's in English and Hmong and the  
25 translation? Do you see how that works, Mr. Lee?

1 A Yeah, I see.

2 Q You can see that at the top of the page there is a T  
3 with words. That's you versus Chong Lee, correct?

4 A Yeah.

5 Q What do you say to start this?

6 A Yeah, yeah, yeah, I know, so how is your case  
7 going.

8 Q And Chong says, uh, so I could -- I should win. And  
9 you say?

10 A You sure.

11 Q Chong says, yes. I don't like -- they don't have  
12 anything on me. You say?

13 A Okay. Man. So you deny it completely.

14 Q Chong says, yes, I completely denied it. But then if  
15 Joe, you know -- and then there's a T and you say?

16 A Yeah, I'm not sure if it's Joe though. I'm thinking  
17 it's Paul.

18 Q Chong says, no, it is Joe.

19 A You sure.

20 Q Chong says, yeah, because Joe told -- Joe told them  
21 that the bullets are here and other things, you know.  
22 You say?

23 A Joe said what.

24 Q Chong says, Joe said to them -- told the police that  
25 inaudible, oh, the bullets inaudible are here, they

1 flushed the toilets like this, like this. You say?

2 A I can't really see from here.

3 Q If you want to step down.

4 ATTORNEY SCHNEIDER: Maybe it's low, Andy,  
5 just raise it up.

6 Q Can you see it now?

7 A Yeah. It says, oh, that's bad, I believe.

8 Q Chong says, Joe said that, yeah, Joe said that Chong  
9 told me that Chong flushed at, uh, and it continues  
10 to the next page.

11 THE COURT: And if you need to move, Mr.  
12 Lee, to be able to see better, that's perfectly  
13 fine.

14 THE WITNESS: Okay.

15 Q (BY ATTORNEY MAIER) And at the top of the page in  
16 the box you say?

17 A Yes, yes, I get it. I get it.

18 Q Chong says, you know.

19 A I know.

20 Q Chong says, yes, it is Joe. You say? And you can  
21 say the words.

22 A Fuck. All right. Damn, but -- oh, man. I don't --  
23 those people were fucking thinking.

24 Q Chong says, it is not your brother so I am not  
25 worried. Your brother knows his part. And you

1 say?

2 A What. I know that. Yeah. I know that but the other  
3 two, man, they're like starting fuck and shit. For  
4 real, man.

5 Q Chong says, tell them to disappear.

6 Mr. Lee, I'm -- I'm sorry, I'm going to show you  
7 what's been marked as Exhibit 172. Do you see that?

8 A Yes.

9 Q Similar to the prior two, correct?

10 A Yes.

11 Q What is the date of this jail phone call?

12 A January 7, 2014, at 11:48 a.m.

13 Q And the number called is 920 --

14 A 574-6656.

15 Q And that's your number at that time, right?

16 A Yeah.

17 Q I'm going to show you a portion of the conversation  
18 on the screen. I would ask you again to read your  
19 part which is in this one identified as Teng Lee.  
20 Can you see that okay?

21 A Yes.

22 Q All right. Chong Lee says, I could call Stephanie,  
23 but Stephanie is at work right now.

24 A I said, you guys dating, dude.

25 Q Chong says, no. Why.

1 A I don't know. It looks like you guys are in love.

2 Q Chong says, she loves me but I love Melanie more.

3 A Damn.

4 Q Chong says, Melanie is my love, Melanie, not  
5 Stephanie.

6 And this continues on to the next page. At the  
7 top it's labeled as T. Do you see that?

8 A Yes.

9 Q What did you say there?

10 A Did you go to your court hearing already.

11 Q Chong says, I got my preliminary hearing on 8:30 in  
12 the morning on February 12th. Chong then says, if  
13 Joe and Paul come, then I am dead. Hey, um, you --  
14 Phong don't have it, they did not give Phong a  
15 inaudible to come. You say?

16 A No, Phong didn't get a subpoena.

17 Q Chong says, oh, because I received my papers and they  
18 said the witness is Phong. You say?

19 A No. Fuck that. I will tell Phong not to come.

20 Q Chong says, Phong, Paul and Joe, if the three of them  
21 do not come, then I get out.

22 And then I'm going to move this up so you can  
23 see the bottom of the page what you say.

24 A I won't let Phong come. If Phong comes I will take  
25 Phong inaudible.

1 Q And then later in the discussion, later in the  
2 conversation Chong says, as long as Paul, Joe and  
3 your brother do not come to say that I did this and  
4 that when I don't care, you know. You say?

5 A That's hard.

6 Q Chong says, but then since they are using the  
7 witnesses as Paul and Phong and Joe as witnesses,  
8 then they are going to fuck me up. You say?

9 A Have you talked to Shoua.

10 Q Chong says, uh-huh. You say?

11 A Have you talked to Shoua.

12 Q Chong says, man, I talked to inaudible, he is so gay.  
13 Chong then says in English, I told him to fucking  
14 come visit me this weekend, so hopefully he comes and  
15 shit because he said he wasn't able to until this  
16 weekend.

17 Mr. Lee, I'm going to show you what's been  
18 marked as Exhibit 173. Similar to the prior  
19 transcripts, right?

20 A Yes.

21 Q This is a call that was made at what time, according  
22 to the printout?

23 A January 22nd, 2014, at 15:46 p.m.

24 Q Okay. That's 3:46. Do you know how a 24-hour clock  
25 works?

1 A Right.

2 Q And the call is to 920 --

3 A 574-6656.

4 Q Same number you had back then?

5 A Yes.

6 Q I'm going to again show you some things up on the  
7 screen.

8 Chong says, you don't give them the letter.

9 Okay.

10 A Dude, they found it. I'm like, yeah, that's the only  
11 one.

12 Q Chong says, I told you to throw it away. You are so  
13 stupid.

14 A Yes, but, dude, you did not say anything in there  
15 inaudible.

16 Q Chong says, yes, I talked about inaudible. You say?

17 A Oh, fuck that bitch ass nigga.

18 Q Chong says, yeah, never mind, that didn't say  
19 anything, hmm, how did they know earlier that I wrote  
20 to Michael too.

21 Mr. Lee, do you know who the Michael that's  
22 referred to is?

23 A Michael Chang, I believe.

24 Q Could it be Michael Thor?

25 A Oh, yeah. Michael Thor, yeah, probably.



1 Q Do you think that's more likely Michael Thor?

2 ATTORNEY VISHNY: I'm going to object.

3 THE COURT: Sustained.

4 Q (BY ATTORNEY MAIER) Later in the conversation Chong  
5 says, I told you that I told him that if he is scared  
6 then inaudible. You say?

7 A Oh, man. So lame.

8 Q Chong says, but if those two come and say they just  
9 lied, there isn't anything, then they will let me go.

10 A Yes.

11 Q Chong says, because right now I --

12 Mr. Lee, I'm going to show you what's been  
13 marked Exhibit 174. You see this document?

14 A Yes.

15 Q And this is another transcript of a recorded jail  
16 call. What's the date of this call?

17 A January 29th, 2014, at approximately, what, 1:00?  
18 11:11 a.m.

19 Q 11:11 a.m. And it's a phone call to 920 --

20 A 574-6656.

21 Q That was still your number on January 29th of 2014 at  
22 11:11 a.m.?

23 A Correct.

24 Q Mr. Lee, in this call Chong says, Melanie and  
25 Stephanie had told the police that I was the one who

1           did it, that I was the one who told them that I did  
2           those things. You say?

3     A     What. For real.

4     Q     Chong says, yes, for real. Later in the conversation  
5           Chong says, yesterday I talked to Stephanie over the  
6           phone, you know, and then I guess Stephanie said that  
7           the police kept harassing them, that was why they  
8           told that to the police. And then Stephanie said  
9           that when the police came to question Stephanie,  
10          Stephanie said it was me because she knew Melanie had  
11          told them already so Stephanie inaudible her sister.  
12          What do you say?

13    A     What. So what did Stephanie say.

14    Q     Chong says, Stephanie said the same thing as Melanie,  
15          that when I was still out there I took us to eat  
16          B-dubs because they had the picture of me and  
17          Stephanie and Melanie, we went to eat B-dubs, right.  
18          Stephanie said I told them. I said why would I do  
19          anything like that when I have so many people there.

20                 You say? And I'll move this up so you can see  
21          better.

22    A     What the fuck, man, and now I got to track those  
23          fucking two down too.

24    Q     Chong replies something inaudible. And you say?

25    A     Damn, man, I'm tired of tracking mother fuckers down.

1 Man, shit.

2 Q Later in the conversation Chong says, yes, but then  
3 -- but then they knew that, that fat boy and Joe,  
4 these jerks did not want to come to court, and then  
5 they were gone and the police were scared so they  
6 left to look for other people to testify against me.  
7 And you say?

8 A Oh, that's so bad.

9 Q He makes reference to someone who calls him fat boy.  
10 Does that have any meaning to you?

11 A Not at this point.

12 Q And later in that conversation you say?

13 A Hey, but do they use those two crazies on your  
14 case.

15 Q Chong says, yes. You say?

16 A They are going to use Melanie and Stephanie too.

17 Q Chong says, yes.

18 A Fuck.

19 Q Chong says, they will bring along those two.

20 A I said, why.

21 Q Chong says, because there's no one else. You say?

22 A Dude, that's so gay. How do they get pictures of  
23 those two and you at B-dubs.

24 Q Chong says, because of Stephanie's picture.

25 A Oh.

1 Q Chong says, yes.

2 A Dude, that's going to be annoying, dude.

3 Q Chong says, I know, right. They're looking at you  
4 guys evil. Jerk. You say?

5 A I don't care. I got nothing to hide.

6 Q And the conversation continues on to the next page  
7 with Chong saying, I know, they are looking at  
8 people's Facebook. You say?

9 A I don't give a fuck.

10 Q Chong says, that's why I'm like, damn, they're  
11 watching me so good. But I don't know what those two  
12 jerk heads are saying.

13 At this point -- I'm going to zoom out a little  
14 bit -- they switch to English, right, so it's T. And  
15 you say?

16 A Damn. And Stephanie just told me -- I mean told you  
17 this yesterday.

18 Q Chong says, yes, that's why I tried to call you back  
19 last night. You say?

20 A Damn, man. What the fuck. Why don't they -- why  
21 don't they -- why don't them two just fucking --  
22 fucking don't even show up either.

23 Q Chong says, I know. You have to tell them.

24 Later in this conversation Chong says, they are  
25 too stupid. Man. But I was like, fuck, I'm not

1 dead. Too hurt that those two are doing that to me.

2 You say?

3 A Dude, they didn't do it on purpose.

4 Q Chong says, because the police harassed her too much.

5 That's why I told them it's okay. I know Stephanie

6 and Melanie are crying like crazy. You say in

7 English?

8 A Oh, they said they were crying.

9 Q Chong says in English, Stephanie sounded like she was

10 crying on the phone. I was like, don't cry. Then

11 you say?

12 A Man, they --

13 Q Chong says, man. And you say?

14 A I don't know if they like -- they had never been in

15 that position before. You know what I'm saying.

16 Q Chong says, yes, them, they got harassed, yes, so --

17 then you switch to English and say?

18 A They didn't like write anything or sign anything, did

19 they.

20 Q Chong says, no.

21 This then continues on to the next page with you

22 saying -- in English you say?

23 A Okay. Then that's good.

24 Q Chong says, I know. He switches to Hmong and says,

25 that's why I'm not too worried. The thing I worry

1           most is they keep bothering my family and friends.

2           You say?

3     A     I'll get to the bottom of it. I'll go talk to them  
4           and shit.

5     Q     Chong says, I'm so hurt, dude, man, I'm so hurt.

6           Mr. Lee, this is the last one. I'm showing you  
7           what's been marked as Exhibit 175, jail call  
8           recording transcript from what date?

9     A     February 2nd, 2014.

10    Q     At what time?

11    A     At 14:17 p.m.

12    Q     That's 2:17?

13    A     Yeah.

14    Q     The call is made to 920 --

15    A     574-6656.

16    Q     And that was still your number in early February,  
17           February 2nd of 2014?

18    A     Correct.

19    Q     This section starts with you talking, it's labeled  
20           Teng. You -- you say in Hmong what?

21    A     Where are your -- where are your courts again.

22    Q     Chong says, um, the 12th at 8:30. You say?

23    A     The 12th of this month.

24    Q     Chong says, yes, coming up.

25    A     Okay. Okay.

1 Q Chong says, they will pull Melanie, Stephanie, Joe  
2 and Paul, all of them to come.

3 A They what.

4 Q Chong says, they will pull Melanie, Stephanie, Joe  
5 and Paul, all of them to come. You switch to English  
6 and say?

7 A No way, they can't.

8 Q Chong says, yes, they are. And you say in English?

9 A I already talked to Mel and Stef and they said, no,  
10 they weren't going to come.

11 Q Chong says, yeah. You say?

12 A Yeah.

13 Q Chong says, whatever. Are you serious. You reply  
14 with something that's inaudible, correct?

15 A I can't remember.

16 Q Well, it says inaudible on there, right?

17 A Yeah.

18 Q And then we switch back to Hmong. Chong says, what  
19 did they say to you. Can you see the bottom there?

20 A No, I can't see from here.

21 They said they're just not going to come and  
22 tell the cops they don't want to be involved.

23 Q The call continues to the next page. Chong says --  
24 sorry. I'm trying to fit this all on one screen.

25 All right. Just clarifying something before we

1 go too far here.

2 Chong continues from the prior page, yes, see,  
3 but the police are so dumb. They hated me so much,  
4 dude. You say? Dude, if --

5 A Fucking if Paul or Joe shows up, we're probably going  
6 to do what we have to do. You know.

7 Q Chong says, I think let Paul and Joe both come.  
8 They'll be too scared because you guys are there.  
9 You say in English?

10 A Dude, if Paul or Joe shows up, then you know what  
11 your brother is going to do, right.

12 Q Chong then says, I -- in Hmong, I know. Sorry. Paul  
13 and Joe both come, then you and foot -- you and  
14 everybody sitting there watching those two dummies.  
15 You say?

16 A Yeah. Do you ever think that Paul -- Paul and Joe  
17 are going to sit on the stand and look at us and have  
18 the balls to fucking say shit.

19 Q Chong says, I know, right. And I sit there watching  
20 those two gay.

21 ATTORNEY MAIER: Your Honor, at this point  
22 I'd ask to move Exhibits 171, 17 -- I'm sorry, 170,  
23 171, 172, 173, 174 and 175 in to the extent that they  
24 were used.

25 THE COURT: Any objection, Counsel?



1 ATTORNEY WEITZ: No.

2 THE COURT: 170 through 175 shall be  
3 received to the extent that they were used.

4 Any additional questions, Mr. Maier?

5 ATTORNEY MAIER: Yes. Briefly.

6 Q (BY ATTORNEY MAIER) In -- Mr. Lee, in January,  
7 specifically January 21st of 2014, Appleton police  
8 officers came to talk to you, correct?

9 A I don't recall remembering that.

10 Q You don't recall which day or you don't recall  
11 officers coming to talk to you?

12 A I don't recall me -- which officers, when they came  
13 to talk to me.

14 Q The -- in the calls, and I can show you which one if  
15 you need to, but there was one that talked about a  
16 letter, and I think it was the same one I was asking  
17 you about the identity of a person named Michael. Do  
18 you recall that?

19 A Yes.

20 Q There was a point that you did receive a letter from  
21 the defendant; is that correct?

22 A Yes.

23 Q And you eventually provided it to the police?

24 A Yes.

25 ATTORNEY MAIER: Mr. Lee, thank you very

1 much. I appreciate that.

2 That's all the questions I have, Your Honor.

3 THE COURT: Attorney Weitz?

4 ATTORNEY WEITZ: One moment.

5 THE COURT: Whenever you're ready, sir.

6 **EXAMINATION OF TENG LEE**

7 **BY ATTORNEY WEITZ:**

8 Q All right. Mr. Lee, you were asked a lot of  
9 questions about these phone calls that were just up  
10 on this board, right?

11 A Yes.

12 Q Okay. And at this point in time, roughly over two  
13 years after the phone calls were made, you don't have  
14 any specific recollection of the -- the words that  
15 were used in those phone calls, right?

16 A No.

17 Q Okay. So the only reason you know what that content  
18 is because that's what was shown to you from those  
19 transcripts, right?

20 A Yes.

21 Q Okay. I'm going to ask you a couple of things about  
22 some of the phone calls, and I'll probably go in the  
23 same order that they were presented to you.

24 So first of all I'm going to turn your attention  
25 to Exhibit 171, which is a phone call from 12/28/13,

1           and I'm going to flip to the part that you were  
2           shown. Do you remember seeing this -- this  
3           highlighted portion that was up on the screen?

4     A     Yes.

5     Q     Okay. And on Page 5, that was also what you were  
6           shown, right?

7     A     Yes.

8     Q     Okay. But there was a portion that wasn't up on the  
9           screen at the very bottom of that page, and that's  
10          something that you said, right?

11    A     Yes.

12    Q     And what does that say there?

13    A     Paul said that it was not him, but I'm like, dude, we  
14          know it's you already, you know you don't need to lie  
15          and shit.

16    Q     Okay. So you're talking about Paul there, right?

17    A     Yes.

18    Q     Okay. Now the next call that you were shown -- I'm  
19          going to show you a page that wasn't up on the  
20          screen, that being Page 5 of Exhibit 172, and there  
21          is another thing that you said, right? That T is  
22          you?

23    A     Yes.

24    Q     And what does that one say?

25    A     But you didn't do it though.

1 Q And this is another conversation with Chong, right?

2 A I believe so.

3 Q Okay. Well you were shown this one and that was a  
4 conversation with Chong, right?

5 A Correct.

6 Q Okay. And then on the very next page, Chong responds  
7 to that, right, and he says, I know, that's why I'm  
8 not worried. I don't care. Right?

9 A Correct.

10 Q In that conversation you were saying that you knew  
11 Chong didn't do it, right?

12 A Correct.

13 Q That was what was on that page? Okay.

14 I'm going to turn your attention to the next  
15 call which was Exhibit 173. I'm going to show you  
16 the top of Page 4 of that call, and it starts again  
17 with something that you said, right?

18 A Correct.

19 Q And what does that say?

20 A Don't worry, dude. We know you didn't do it  
21 though.

22 Q And then Chong responds.

23 A I know.

24 Q Okay. All right. And I'm just going to ask you to  
25 read another line on Page 16. There's another thing

1           that you said. You see that line right there?

2     A     Yes.

3     Q     Can you just read that line right there?

4     A     This one.

5     Q     The one up there. That's you speaking. That T is  
6           you, right?

7     A     Right. I'm like, dude, Chong didn't even do it. Why  
8           the fuck would you point the finger at Chong.

9     Q     Okay.

10                   ATTORNEY WEITZ: I just need one moment. I  
11           need to mess with these Post-it notes here.

12                   THE COURT: Not a problem.

13     Q     (BY ATTORNEY WEITZ) I'm going to go back to the same  
14           exhibit now that I moved the Post-it notes around.  
15           I'm just going to have you read. This is the  
16           sentence where I'm pointing that you just read,  
17           correct?

18     A     Correct.

19     Q     And then you just kind of orient yourself here, if  
20           you read it a little bit further, this is talking  
21           about Paul, right?

22     A     Correct.

23     Q     Okay. So after that sentence that you just read  
24           where you said Chong didn't even do it, why would you  
25           point the finger at Chong, what does Chong say after

1           that?

2     A     He's so dumb. I'm like, oh, no, too stupid. They  
3           make me so mad.

4     Q     Okay. And then you say?

5                     ATTORNEY MAIER: I'm going to object at  
6           this point, Your Honor. Can we come up?

7                     (Bench conference.)

8     Q     (BY ATTORNEY WEITZ) All right. I'm going to turn  
9           your attention back to that same page. There is a  
10          couple things we'll skip here, and then at the bottom  
11          of the page it starts again with you saying  
12          something, right? Do you want to read that line?

13    A     I know, I was like, dude, I was like, man, your  
14          brother.

15    Q     Unintelligible. Out.

16                     And that's again talking about Paul, right?  
17          That's from that same conversation.

18    A     Correct.

19    Q     And then Chong says, I told you that -- I told him if  
20          he is scared then inaudible. And you say?

21    A     Oh, man, so lame.

22    Q     And then Chong says, but if those two come and say  
23          that they just lied, there isn't anything and they  
24          will let me go. Right?

25    A     Yes.

1 Q And then Chong says, because right now I -- and then  
2 you kind of interrupt him, and you say?

3 A I told them up front you need to go to court and tell  
4 the truth, you need to bury this shit unintelligible  
5 under the fucking inaudible the pressure. Paul, he  
6 got scared so he unintelligible and shit.

7 Q And then Chong says, Paul said what.

8 ATTORNEY MAIER: At this point I'd raise  
9 the same issue we just did.

10 ATTORNEY WEITZ: Okay.

11 Q (BY ATTORNEY WEITZ) And then Chong says later, I  
12 know the report stated Paul hit him. And then you  
13 say?

14 A Yeah, I know, and I'm like, Paul, you fucking hit  
15 that fool. What the --

16 Q And then Chong says, you dog, yeah, they said that  
17 they were just pointing fingers at me. I got mad.  
18 Right?

19 A Correct.

20 Q Next I'm going to turn your attention to Exhibit 174,  
21 which is one of the ones that was up on the screen.  
22 And just to refresh your memory, this is a  
23 conversation about Stephanie and Melanie; is that  
24 fair to say?

25 A Correct.

1 Q Okay. And when you say, what the fuck, man, and now  
2 I got to track those, pardon my language, fucking two  
3 down too, right?

4 A Correct.

5 Q And in that conversation, you're the one that brings  
6 up tracking people down, aren't you?

7 A Correct.

8 Q Okay. And Chong responds with inaudible, right?

9 A Correct.

10 Q And then you are the one that again brings up, I'm  
11 tired of tracking, again, pardon my language, mother  
12 fuckers down, right?

13 A Correct.

14 Q So that came from you, not from Chong?

15 A Right.

16 Q I'm going to turn your attention to Page 7 of that  
17 same phone call which was up on the -- the screen  
18 where you were saying that, why don't them two -  
19 again, about Stephanie and Melanie - just - and then  
20 there is a couple of F words - don't even show up  
21 either. Is that what that says, right?

22 A Correct.

23 Q And then Chong says, I know, you have to tell them.  
24 Right?

25 A Correct.



1 Q And then if you go ahead a little bit in the  
2 conversation, turn your attention to this line right  
3 here. Chong says, I know, dude, forget it. Don't  
4 worry. Right?

5 A Correct.

6 Q And then goes on to say, because I -- I already  
7 wanted, it's inaudible, right?

8 A Correct.

9 Q They try to push people to say things against me,  
10 right?

11 A Correct.

12 Q So at that point he's saying forget it, don't worry.  
13 Right?

14 A Correct.

15 Q And that's just a couple lines past when you're  
16 talking about them not showing up for court, right?

17 A Correct.

18 Q And then he says, forget it. Right?

19 A Yup.

20 Q Okay. All right. I'm going to go a little bit  
21 further in that phone call, we're on Page 8 now, and  
22 this is a statement by you, right, this is T, that's  
23 you?

24 A Correct.

25 Q And you're saying, we're still trying to track down

1 the mother fucker who did it, right?

2 A Correct.

3 Q Okay. Now I'm going to show you Exhibit 175 which  
4 was another call that you were shown. And this is  
5 again a conversation about Stephanie and Melanie,  
6 right? You just want to take a second to read it?

7 A Yeah.

8 Q Okay. And in this conversation, again, you're the  
9 first person that brings up talking to Melanie and  
10 Stephanie, right?

11 A Correct.

12 Q And you're the one that says that, no, they weren't  
13 gonna come, right?

14 A Correct.

15 Q And then Chong later on, two lines down, acts kind of  
16 surprised. He said, whatever. Are you serious. And  
17 that's a question, right?

18 A Correct.

19 Q Okay. And then we'll go ahead to the next page, and  
20 there's some conversation then about Paul or Joe,  
21 right?

22 A Correct.

23 Q And you're the one that says, dude, if fucking -- if  
24 Paul or Joe shows up we're probably going to do what  
25 we have to, you know. That's what you say?

1 A Correct.

2 Q And Chong actually responds back with, I think let  
3 Paul and Joe both come, right?

4 A Correct.

5 Q And he goes on to say a couple other things about  
6 them being too scared, but he certainly doesn't say  
7 that they shouldn't come to court, right?

8 A Correct.

9 Q Okay. So you've known Chong for a while now, Mr.  
10 Lee, right?

11 A Yes.

12 Q And you know from your experience with Chong that he  
13 lies and brags about stuff, right?

14 A Yes.

15 Q Okay.

16 ATTORNEY WEITZ: Nothing further. Thank  
17 you.

18 THE COURT: Any redirect, Mr. Maier?

19 ATTORNEY MAIER: Yes.

20 **EXAMINATION OF TENG LEE**

21 **BY ATTORNEY MAIER:**

22 Q Mr. Lee, you -- you indicated to the defendant one of  
23 the calls that Melanie and Stephanie were not going  
24 to come to court and then you talk a little bit about  
25 what they told you; is that fair to say?

1 A Yes.

2 Q How did you -- how did you find out that they weren't  
3 going to come to court?

4 A I don't recall remembering how.

5 Q Do you recall sending Melanie a message through  
6 Facebook?

7 A That I believe I remember a little bit about, yeah.

8 Q And the message told them not to talk to the cops or  
9 to testify, right?

10 A I can't recall if it said that or anything.

11 Q Okay. Do you recall talking to the -- the police  
12 about the message that you sent on Facebook?

13 A I believe it was just about them not coming to  
14 Chong's court.

15 Q Right.

16 A Yeah.

17 Q You told the police about that, right?

18 A Correct, I believe so, yes.

19 Q You said that you had sent that message?

20 A Yes.

21 Q Attorney Weitz then -- and actually, while I was  
22 having you read some of the calls and then Attorney  
23 Weitz covered some other things, there is some spots  
24 in some of these calls where you tell the defendant  
25 words to the effect of, I know you didn't do it or

1           you didn't do it, right?

2     A     Correct.

3     Q     You talked to the police about that topic as well,  
4           right?

5     A     I believe so.

6     Q     And you told them --

7                     ATTORNEY WEITZ: Your Honor, can we  
8           approach at this point?

9                     THE COURT: You may.

10                    (Bench conference.)

11                   THE COURT: Whenever you're ready, Mr.  
12           Maier.

13     Q     (BY ATTORNEY MAIER) What do you recall telling the  
14           police about a reason why you did that?

15     A     I don't recall remember what I said.

16     Q     You don't recall telling Sergeant Thao that it was to  
17           help make Chong feel better while he was in jail?

18     A     Yeah. I believe so. Like big bad talks only just to  
19           keep Chong comfy in jail. Yeah, I believe so.

20                   ATTORNEY MAIER: Okay. That's all the  
21           questions I have. Thank you.

22                   THE COURT: Attorney Weitz, any follow-up  
23           questions?

24                             **EXAMINATION OF TENG LEE**

25     **BY ATTORNEY WEITZ:**

1 Q Mr. Lee, when you told Sergeant Thao that, that you  
2 were just saying things to kind of appease Chong,  
3 that wasn't about when you said that Chong didn't do  
4 it, that was about the other things you were saying  
5 about witnesses, right?

6 A I don't recall remembering that either so --

7 Q Do you remember one way or another what exactly you  
8 were talking about then?

9 A Probably not.

10 Q Okay. Well you -- you certainly didn't intend to  
11 follow through and make sure that witnesses weren't  
12 going to come to court, right?

13 A Correct.

14 ATTORNEY MAIER: I'm going to object.  
15 Relevancy.

16 ATTORNEY SCHNEIDER: What he does is  
17 irrelevant or what he intended to do.

18 THE COURT: I'll sustain the objection.

19 Q (BY ATTORNEY WEITZ) Mr. Lee, when you were talking  
20 to Sergeant Thao, he was making some statements  
21 towards you about potential jail time that you were  
22 looking at, right?

23 A I believe so.

24 Q Okay. And that was in reference to your involvement  
25 in this case, right?

1 A Correct.

2 Q Okay. And at one point he even told you that you  
3 would potentially be referred for charges on this  
4 case, right?

5 A Correct.

6 Q And that was in regards to these telephone calls.

7 A I believe so, yeah.

8 Q Okay. So at the point when you're saying these  
9 things to Sergeant Thao, that was after he had  
10 already told you that you were potentially looking at  
11 jail time.

12 A Yes.

13 Q And do you remember the exact words from Sergeant  
14 Thao being, because right now you're looking at  
15 potential, just one count, ten years?

16 A I don't recall remembering that so.

17 Q Okay. And then later on do you remember him saying  
18 that he's willing to give you consideration today  
19 because he thinks you're a good person?

20 A I don't recall remembering that either so.

21 Q Do you remember in the conversation him telling you a  
22 few times that he thinks you're a good person, you  
23 didn't actually want to get involved in this,  
24 correct?

25 A Correct.

1 Q And in that conversation, that's when you bring up  
2 that you were just saying these things kind of as  
3 puffery, right?

4 A Right.

5 Q And that's when Sergeant Thao says that he thinks  
6 you're a good person and no longer thinks that you  
7 were involved or needed to face jail.

8 A I believe so.

9 ATTORNEY WEITZ: Nothing further.

10 THE COURT: Mr. Maier.

11 **EXAMINATION OF TENG LEE**

12 **BY ATTORNEY MAIER:**

13 Q At the time Sergeant Thao said these things, this is  
14 after these calls have been made, right?

15 A I believe so, yes.

16 Q And they came and talked to you February 19th, the  
17 last call that we talked about was made on February  
18 2nd?

19 A I believe so.

20 ATTORNEY MAIER: That's all.

21 THE COURT: Attorney Weitz?

22 ATTORNEY WEITZ: Nothing further. Thank  
23 you.

24 THE COURT: Ladies and gentlemen of the  
25 jury, any questions?



1 (No response.)

2 THE COURT: Very good.

3 Sir, I thank you. You may be excused.

4 Can I have counsel approach?

5 (Bench conference.)

6 THE COURT: Ladies and gentlemen, we are  
7 concluded for today. We are not going to be  
8 conducting court over the weekend, so your weekend  
9 will be free. I hope that you're able to enjoy that.

10 Again, my orders about social media and the news  
11 still remain in effect.

12 I'd ask that you return at 8:45 on Monday. So  
13 thank you for your attention this week, and I will  
14 see you on Monday.

15 (The jury was escorted out of the  
16 courtroom.)

17 THE COURT: During that session we had  
18 three sidebars, one related to a question --  
19 actually, I believe all of them but one related to  
20 questions during Mr. Trainum's testimony.

21 The first one related to questions about joking  
22 about murder, that was allowed.

23 Subsequently there was a question about or an  
24 objection to hearsay based on the anonymous tips.  
25 The court did sustain that objection.

1           There was also a question which was posed about  
2           snitches get stitches. The court sustained the  
3           objection as to that reference indicating that  
4           questions may come from the -- the actual testimony  
5           but that that phrase should not be utilized.

6           Finally, there were a couple other sidebars  
7           during Mr. Teng Lee's testimony, but those did not  
8           necessitate any affirmative decisions by the court.

9           Is that your understanding of a summary of the  
10          objections, Attorney Schneider, Attorney Maier?

11                   ATTORNEY SCHNEIDER: Yup.

12                   THE COURT: Attorney Vishny, Attorney  
13          Weitz?

14                   ATTORNEY VISHNY: Yes.

15                   ATTORNEY WEITZ: Yes.

16                   THE COURT: Okay.

17           I do have, only in hopes that we might be able  
18           to get a jump start on this, I have full packets of  
19           the proposed jury instructions.

20                   ATTORNEY SCHNEIDER: Sure. We'll take them  
21           home and look over the weekend.

22                   THE COURT: I'll have each a copy for you.  
23           We'll still do a jury conference, but I thought if  
24           you want --

25                   ATTORNEY VISHNY: This is what -- based on

1           our submissions and your analysis of the law.

2                   THE COURT: At this point in time all I've  
3           done is I've compiled the two requested instructions  
4           into one packet.

5                   ATTORNEY VISHNY: I see.

6                   THE COURT: So that's the extent of what  
7           I've done up to this point.

8                   ATTORNEY VISHNY: Thank you.

9                   THE COURT: And I will get that  
10          momentarily.

11                   (Proceedings concluded.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

2

3

## C E R T I F I C A T E

4

5 STATE OF WISCONSIN )  
6 COUNTY OF OUTAGAMIE ) ss.:

7

8

9 I, JOAN BIESE, RMR/CRR, do hereby certify that I  
10 am the official court reporter for Branch IV of the  
Circuit Court of Outagamie County;

11 That as such court reporter, I made full and  
12 correct stenographic notes of the foregoing proceedings;

13 That the same was later reduced to typewritten  
14 form;

15 And that the foregoing proceedings is a full and  
16 correct transcript of my stenographic notes so taken.

17 Dated this 15th day of August, 2016.

18

19

20

---

JOAN BIESE, RMR/CRR

21

22

23

24

25